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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 550a)

Supreme Court of the United States

OCTOBER TERM, 1943

No. 392

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

GLOBE OIL & REFINING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 28, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOL. I pp. 1 to 550a.

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Respondent.

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In the
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For the Seventh Circuit

No. 7912

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellant,

vs.

GLOBE OIL & REFINING COMPANY,
Defendant-Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

THE BLAKELY PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

DOCKETED JAN. 14, 1942.
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UNIVERSAL OIL PRODUCTS COMPANY,
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Defendant-Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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Coast patent No. 1,250,799			7	3262
814—Prior Art Patents in File Wrapper of Egloff, 1,537,593, except those shown as separate exhibits:				
Perkins patent No. 399,073			7	3116
Lang patent No. 954,575			7	3140
Gillons patent No. 1,084,080			7	3154
Forward patent No. 1,202,823			7	3218
Curran patent No. 1,255,714			7	3268
815—Dubbs patent 1,686,654			7	3468
816 for ident.—Excerpts from certified copy of File Wrapper of Dubbs patent 1,686,654	3	1345	6	2961
817—U. O. P. Bulletin B536, dated Jan. 15, 1926			6	2977
818A-O—Summaries of Run sheets for Dubbs cracking units			6	2978
819—Excerpts from U. O. P. Bulletin (1936) entitled "Cracking, Yesterday, Today and Tomorrow"			6	2993
820—Excerpts from U. O. P. Bulletin SR-508, June 20, 1932			6	2993
821—Excerpts from U. O. P. Bulletin SR-521, June 20, 1932			6	2994

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823—Hall patent 1,242,796			7	3230
824—Hall patent 1,194,289			7	3212
825—Excerpts from "Principles of Chemical Engineering" by Walker, Lewis and McAdams			6	2994
826A—Excerpts from certified copy of File Wrapper of Interference No. 52,305			6	2995
827A—Excerpts from the Warner-Quinlan Brief			6	2997
827B—Pielsticker drawing from the Warner-Quinlan Brief			6	3015
828—Excerpts from Interrogatories and Answer in C. P. Dubbs v. Universal Oil Products Co.			6	3017
831—Mechling free hand sketch of normal Alexander operation	3	1353	6	3021
832—Mechling free hand sketch #1—"Regular Operation"	3	1355	6	3023
833—Mechling free hand sketch #2—"Return of part of condensate from Fractionating Tower with Fresh Feed"	3	1355	6	3025
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UNITED STATES LETTERS PATENT.

No. 1,392,629—C. P. Dubbs, Oct. 4, 1921.....3086

No. 1,537,593—G. Egloff, May 12, 1925.....3094

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No. 16,877—Reissue—O. Behimer, Feb. 14, 1928...3098

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No. 1,084,080—G. H. Gillons, Jan. 13, 1914.....3154
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No. 1,388,629—J. W. Coast, Jr., Aug. 23, 1921.....3344
No. 1,396,999—C. Ellis, Nov. 15, 1921.....3352
No. 1,407,619—C. M. Alexander, Feb. 21, 1922.....3364
No. 1,428,338—F. T. Manley, Sept. 5, 1922.....3382
No. 1,428,339—F. T. Manley, Sept. 5, 1922.....3388
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No. 1,462,143—F. T. Manley, July 17, 1923.....3410
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1 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

7912

Universal Oil Products Company,
Plaintiff-Appellant,
vs.
Globe Oil & Refining Company,
Defendant-Appellee.
} Equity No. 10744.

CERTIFICATE.

This is to certify that the following consisting of a bound folder is a part of the abstract of the record to be printed by the Clerk in accordance with the stipulation of the parties filed and approved by Evan A. Evans, Judge of the United States Circuit Court of Appeals, on March 24th, 1942.

Alexander H. Reichmann,
Attorney for Plaintiff-Appellant.

J. Bernhard Thiess,
Attorney for Defendant-Appellee.

ACTUAL ENTRIES ON DOCKET SHEETS AT CLERK'S OFFICE.

Date 1931	
7 22	Filed Bill of Complaint and copy.
7 22	Filed Security for costs.
7 23	Issued process and copies.
8 18	Filed process. Returned served as to Globe Oil & Ref. Co., Fee $4.10.
8 24	Filed stipulation extending time for defendant to answer, etc., to and including 9/17/31.

Date	
1931	
8 29	Filed appearance of Globe Oil & Ref. Co.
9 5	Filed appearance of additional counsel for plaintiff.
9 18	Filed stipulation extending time for defendant to answer to and including 11/17/31.
11 11	Filed stipulation.
11 11	By stipulation time of Globe Oil & Ref. Co., to answer or otherwise move extended to and including 12/26/31. Wilkerson, J.
11 18	Filed stipulation.
11 18	By stipulation time for Globe Oil & Ref. Co. to answer, etc., extended to 1/25/32. Wilkerson, J.
1932	
1 22	Filed stipulation.
1 22	By stipulation time of defendant to answer extended to and including 3/2/32. Carpenter, J.
3 2	Filed answer and copies of Globe Oil & Ref. Co.
9 27	By agreement continued. Wilkerson, J.
9 1	Notice to Commissioner of Patents.
1933	
9 19	Placed on "Passed Case" calendar. Barnes, J.
1936	
9 24	No order. Holly, J.
10 13	Filed Notice.
10 13	Leave to file bill in nature of a Supplemental Bill. Defendant to answer in thirty days. Draft. Holly, J.
10 13	Filed bill in nature of a supplemental bill.
10 23	Filed answer and copy of Globe Oil & Ref. Co. to Bill in nature of supplemental bill, etc., and copy.
3	
1937	
4 28	Filed notice.
4 28	Filed motion of defendant for leave to file amendment to answer.
4 29	Filed notice and motion plaintiff for leave to file amendment to bill.
4 29	Motion defendant's for leave to file amendment to answer set for hearing 5/10/37.

Date 1937	
4 29	Motion plaintiff's for leave to file amendment to bill continued to 5/10/37. Holly, J.
5 11	Leave to plaintiff to file instanter amendment to bill and to defendant to file amendment to answer, and each party to have twenty days to reply to the other's amendment. Draft, Holly, J.
5 11	Filed amendment to defendant's answer.
5 11	Filed amendment to Bill of Complaint.
5 21	Filed amendment to defendant's answer and copy.
5 27	Filed plaintiff's answer to defendant's counterclaim.
6 18	Leave to plaintiff to file interrogatories instanter and rule on defendant to answer same in fifteen days or file objections thereto in ten days after service. Holly, J. Draft.
6 18	Filed interrogatories (attached to draft).
6 21	Mailed copy of interrogatories to defendant.
6 21	Filed receipt for interrogatories.
6 21	Filed notice, motion of plaintiff for enlargement of time and affidavit.
6 21	Plaintiff's time for taking deposition enlarged to and including 7/31/37 and defendant's time to and including 9/11/37. Defendant's time to answer interrogatories or file objections extended thirty days. Cause set for trial 10/5/37. Holly, J.
7 2	Motion to vacate order of setting or for clarification thereof continued to 7/8/37. Holly, J.
7 2	Filed notice.
7 2	Filed motion defendant to vacate order.
7 8	Arguments heard on motion to vacate order of setting or for clarification thereof and no order. Holly, J.
8 3	Filed stipulation.
8 3	By stipulation Globe Oil & Ref. Co.'s time to answer or object to plaintiff's interrogatories extended to and including 9/4/37. Woodward, J.
8 30	Filed depositions on behalf of plaintiff.
9 2	Filed stipulation.
9 2	On stipulation time within which defendant, Globe Oil & Ref. Co., may file answer or objections to plaintiff's interrogatories extended to and including 9/11/37. Sullivan, J.
9 13	Filed stipulation.

Date	
1937	
9 13	By stipulation time for defendant to answer or object to plaintiff's interrogatories extended to and including 9/21/37. Barnes, J.
4	
9 21	Filed stipulation.
9 21	By stipulation time for defendant to answer plaintiff's interrogatories extended to and including 9/30/37. Barnes, J.
9 28	Filed stipulation re patents.
9 28	Leave to file stipulation of counsel agreeing to introduction of exhibits in suit. Holly, J.
10 5	Hearing on merits and all issues continued and set for 11/15/37. Holly, J.
10 15	Filed stipulation re depositions, etc.
10 19	Filed notice and motion plaintiff for hearing before trial.
10 19	Hearing on issue of res judicata set for 10/25/37. 11 A.M., Holly J.
10 25	Arguments heard on issue of res judicata and taken under advisement. Parties to submit and exchange briefs by 10/29/37. Holly, J.
10 29	Filed memorandum—brief for plaintiff.
10 29	Filed defendant's memorandum.
11 18	Filed plaintiff's reply to memorandum of defendant, Globe Oil & Ref. Co.
11 23	Filed defendant's further brief.
11 27	Filed plaintiff's reply to defendant's second brief.
12 1	Leave to plaintiff to file amendment to bill instanter and excepts. Draft. Question of res judicata referred to Master Eiseman to take and report evidence. Defendant excepts. Draft. Holly, J.
12 1	Filed amendment to Bill of Complaint.
12 31	Filed praecipe and issued witness subpoena.
1938	
1 4	Filed notice, motion, defendant to dismiss bill, etc., and affidavit.
1 4	Motion to dismiss bill, etc., and motion to take testimony, etc., continued to 1/18/38. Order that witness Otto Behimer return on that date. Leave to defendant to amend answer within ten days. Holly, J.

Date		
1938		
1	5	Filed amendment to answer of Globe Oil & Ref. Co., and copy.
1	5	Filed notice.
1	5	Filed notice.
1	5	Filed petition for subpoena duces tecum. (Attached to draft order.)
1	5	Order issue subpoena duces tecum to Otto Behimer as prayed in petition. Draft. Holly, J.
1	5	Issued subpoena duces tecum and copy.
1	7	Applications for issuance of subpoena duces tecum to Universal Oil Products Company continued to 1/11/38. Holly, J.
1	12	Filed notice.
5		
1	12	Filed motion defendant for leave to take depositions.
1	12	Filed affidavit of Thorley von Holst.
1	12	Leave to defendant to take deposition of Richard J. Dearborn. Holly, J.
1	12	Order setting 1/18/38 for hearing on motion to dismiss vacated. Holly, J.
1	14	Filed notice.
1	14	Filed motion Globe Oil & Ref. Co., to file interrogatories with interrogatories attached to said motion.
1	14	Leave to defendant to file interrogatories instanter. Rule on plaintiff to answer first five interrogatories and motion denied as to the last six interrogatories. Holly, J.
1	17	Filed witness subpoena; returned served. Fees $1.22.
1	17	Filed subpoena duces tecum. Returned served. $1.22.
1	28	Filed praecipe and issued witness subpoena.
1	28	Filed notice.
1	28	Filed motion defendant to set for hearing.
1	28	Issue of Unclean Hands set for hearing 2/23/38. Holly, J.
2	9	Filed notice and motion defendant to amend answer.
2	9	Leave to file amendment to defendant's answer instanter. Holly, J.

Date 1938	
2 9	Filed amendments to answer of defendant.
2 16	Filed witness subpoena. Returned served, as to Maurice S. Beyt. Fee $2.62.
2 18	Filed plaintiff's answers to defendant's interrogatories, and copy.
2 21	Order vacating tentative setting of hearing of 2/23/38, Holly, J.
3 4	Filed notice.
3 4	Defendant's motion on issue of Unclean Hands set for trial 4/12/38. Holly J.
4 8	Filed depositions for defendant.
4 12	Arguments and evidence heard on issue of Unclean Hands and conitnued to 4/13/38: Holly, J.
4 13	Further evidence heard and hearing continued to 4/14/38. Holly, J.
4 14	Further evidence heard and hearing continued to 4/15/38. Holly, J.
4 15	Further evidence heard and hearing continued to 5/3/38. Holly, J.
4 19	Filed witness subpoena. Returned served. Fee .56.
4 11	Filed praecipe and issued witness subpoena.
5 3	Hearing continued to 5/23/38; 2 P. M., Holly, J.
6 1	Further evidence heard and hearing continued to 6/2/38. Holly J.
6 2	Filed notice.
6 2	Filed motion for order to produce records.
6	
6 2	Further evidence heard and continued to 6/3/38. Holly, J.
6 3	Further evidence heard and continued to 6/7/38. Holly, J.
6 7	Filed praecipe and issued witness subpoena.
6 7	Further evidence heard and continued to 6/8/38. Holly, J.
6 8	Further evidence heard and continued to 6/9/38. Holly, J.
6 9	Filed petition of defendant for subpoena duces tecum.
6 9	Evidence heard and concluded; continued to 6/28/38 for final arguments. Holly, J.

Date	
1938	
6 9	Application for issuance of subpoena duces tecum denied. Holly, J.
6 28	Filed witness subpoena. Returned served. Fee .56.
6 29	Final arguments heard and continued to 7/27/38; taken under advisement. Holly, J.
7 13	Filed plaintiff's reply brief.
8 2	Defendant's defense of Unclean Hands on motion to dismiss amended. Bill denied. Draft. Holly, J.
8 6	Filed stipulation.
8 6	Filed testimony taken before Master.
8 6	Filed depositions of David Phillips Hamilton and Charles S. Smith.
8 6	Filed depositions of William Henry Lamprecht and Henry F. Heil.
8 6	Filed depositions of Fred C. Koch and W. E. Perdew.
8 6	Filed plaintiff's exhibits 1-95, incl., 95a to f, inc. 96 to 151, incl., 251 to 256, incl., 256a, 257 to 262, incl.
8 6	Filed defendant's exhibits Nos. 152 to 162, incl., 163a to m, incl., 164 to 172 incl., 173a to k, incl., 174a to Q, incl. and 250.
8 12	Filed notice.
	Filed defendant's motion to suppress and to strike out certain evidence.
1941	
8 1	Findings of Fact and Conclusions of Law. Draft. Holly, J.
1938	
10 3	Argument on issue of res judicata set for 10/24/38. Holly, J.
10 4	Mailed notice of order to attorneys of record.
10 4	Filed notice and motion of defendant to strike.
10 5	Defendant's motion to strike plaintiff's findings denied. Leave to defendant to file its findings and objections to plaintiff's findings in 10 days. Plaintiff to have five days for objection to defendant's findings. Draft. Holly, J. (Notice waived.)
10 4	Filed findings of fact submitted by plaintiff and conclusions of law.

Date		
1938		
10	8	Filed plaintiff's motion to suppress and strike out certain evidence, and copy.
10	5	Plaintiff to file brief on issue of res judicata by 10/10/38; defendant by 11/15/38, and plaintiff to have until 12/1/38 for reply. Oral argument set for 12/5/38. Draft. Holly, J.
10	5	Notice of order entered waived.
7		
10	10	Filed brief for plaintiff on the issue of res judicata.
10	14	Filed objections to plaintiff's proposed findings.
10	14	Filed findings submitted and requested by defendant.
10	18	Filed stipulation.
10	18	By stipulation. Order extending time for plaintiff to file objections to findings and conclusions submitted and requested by defendant to and including 10/29/38. Draft. Holly, J.
10	24	Objections to testimony before the Master continued to 12/5/38 by agreement. Holly, J.
10	28	Filed plaintiff's objections to defendant's proposed conclusions and findings.
11	15	Filed defendant's brief on issue of res judicata.
11	2	Filed reply brief for plaintiff on issue of res judicata.
12	13	Filed notice.
12	13	Leave to defendant to file reply brief on issue of res judicata. Judge Holly.
12	13	Mailed notice of order to attorneys.
12	19	By agreement continued to 1/26/39, for arguments on issue of res judicata. Holly, J.
12	20	Mailed notice of order to attorneys.
1939		
1	26	Arguments of counsel heard in part on issue of res judicata and continued to 1/27/39 for further hearing. Holly, J.
1	27	Further arguments on issue of res judicata heard; concluded and advisement. Holly, J.
1	30	Mailed notice of order to attorneys.
4	18	Filed memorandum.
4	28	Filed Court's findings of fact and conclusions of law.

Date 1939	
5	1 Filed notice.
5	1 Motion of defendant for leave to file petition to reopen proofs continued to 5/8/39.
5	1 Mailed notice to attorneys as per notice.
5	8 Motion of defendant for leave to file petition to reopen proofs continued to 5/15/39 by agreement. Holly, J.
5	9 Mailed notice to attorneys.
5	15 Leave to defendant to file petition to reopen proofs instanter and rule on plaintiff to answer in fourteen days and set for hearing on petition and answer 6/2/39. Holly, Jr.
8	
5	15 Petition for leave to reopen proofs on grounds of newly discovered evidence and for rehearing filed.
5	16 Mailed notice to attorneys.
6	1 Answer to defendant's petition for leave to reopen proofs on the grounds of newly discovered evidence and rehearing filed, and copy.
6	2 Order petition to reopen proofs and the answer of plaintiff taken under advisement. Defendant to file brief by 6/15/39; plaintiff by 6/19 and defendant to have until 6/26/39 for reply. Holly, J. Mailed notice of entry of order to attorney.
6	5 Filed defendant's brief on rehearing on the issue of res judicata.
6	20 Filed brief for plaintiff in application for rehearing of res judicata issue.
6	27 Filed defendant's exhibits on hearing of res judicata issue.
6	27 Filed defendant's reply brief.
7	14 Filed memorandum of Judge Holly. Mailed copy of memorandum to Attorney General.
8	12 Filed plaintiff's petition for rehearing.
8	14 Filed notice.
8	14 Leave to plaintiff to file memorandum on petition for rehearing by 9/5 and defendant to have until 9/20/39 for reply. Holly, J.
8	16 Mailed notice to attorneys.
9	19 Filed defendant's reply to plaintiff's petition for rehearing.

Date	
1939	
9 22	Filed notice. Order, motion to fix time for plaintiff to reply to defendant's reply to plaintiff's petition for rehearing entered and continued to 9/25/39 before Judge Holly. Barnes, J. Mailed notice to attorneys.
9 25	Order setting 10/9/39 for plaintiff to reply to defendant's reply to plaintiff's petition for rehearing. Holly, J.
9 27	Mailed notice to attorneys.
10 7	Filed plaintiff's reply to defendant's answer to plaintiff's petition for rehearing. Copy.
11 29	Filed memorandum of Judge Holly.
11 30	Filed notice.
11 30	Order plaintiff's petition for rehearing denied decrees of U. S. District Court for the District of Delaware adjudged not res judicata in this cause. Draft. Holly, J.
11 30	Filed notice.
11 30	Mailed notice to attorneys.
9	
1940	
1 4	Filed notice.
1 4	Leave to defendant to file amended answer instanter. Holly, J.
1 4	Filed amended answer of defendant.
1 4	Filed motion.
1 8	Mailed notice to attorneys.
2 13	Cause set for trial 4/15/40. Holly, J.
2 15	Mailed notice to attorneys.
3 26	Filed plaintiff's answer to defendant's request for admissions.
3 27	Filed defendant's exhibits 212 to 235, incl., 237, 241, 242, 243, 244, 245a and b and 249.
4 2	Filed notice.
4 2	Motion of defendant for leave to file certain interrogatories and for order requiring plaintiff to answer same entered and continued to 4/9/40. Holly, J.
4 3	Mailed notice to attorneys.
4 9	Leave to defendant to file interrogatories instanter and order plaintiff answer same in ten days. Holly, J.

Date 1940	
4 9	Filed interrogatories of defendant.
4 10	Mailed notice to attorneys.
4 15	Trial continued to 5/1/40 by agreement. Holly, J.
4 16	Mailed notice to attorneys.
4 19	Filed transcript in re motions re interrogatories.
4 19	Filed proof of service and answers to interrogatories of defendant.
4 19	Filed answers to defendant's interrogatories.
4 22	Filed answers to defendant's interrogatories.
5 1	Trial continued to 5/6/40. Woodward, Judge.
5 2	Notice to attorneys.
5 7	Cause called for trial. Statement of counsel heard and trial continued to 5/8/40. Holly, J.
5 8	Evidence heard in part for plaintiff and trial continued to 5/9/40, 10:15 A. M., Holly, J. Notice of entry of order waived.
5 10	Filed deposition of Luis de Florez.
5 9	Further evidence heard for plaintiff and trial continued to 5/10/40, 10:15 A. M., Holly, J. Notice of entry of order waived.
5 10	Further evidence heard for plaintiff and trial continued to 5/14/40, Holly, J. Notice of entry of order waived.
5 15	Further evidence heard for plaintiff and trial continued to 5/16/40. Notice of entry of order waived. Holly, J.
10	
5 16	Further evidence heard for plaintiff and trial continued to 5/17. Holly, J. Notice of entry of order waived.
5 17	Further evidence heard for plaintiff and trial continued to 5/20/40, Holly, J.
5 20	Further evidence heard for defendant in part. Further evidence heard for plaintiff and trial continued to 5/21/40. Holly, J. Notice of entry of order waived.
5 21	Further evidence heard for plaintiff and trial continued to 5/22/40. Holly, J. Notice of entry of order waived.
5 22	Further evidence heard for plaintiff and concluded. Further evidence heard for defendant and continued to 5/23/40. Sullivan, J. Notice of entry of order waved.

Date 1940	
5 23	Further evidence heard for defendant and trial continued to 5/24/40. Holly, J. Notice of entry of order waived.
5 24	Further evidence heard for defendant and trial continued to 5/27/40. Holly, J. Notice of entry of order waived.
5 27	Further evidence heard for defendant and trial continued to 5/28/40. Holly, J. Notice of entry of order waived.
5 28	Further evidence heard for defendant and trial continued to 5/29/40. Holly, J. Notice of entry of order waived.
5 29	Further evidence heard for defendant and trial continued to 6/3/40. Holly, J.
6 3	Further evidence heard for defendant and trial continued to 6/4/40. Holly, J. Notice of entry of order waived.
6 4	Further evidence heard for defendant and trial continued to 6/5/40. Holly, J. Notice of entry of order waived.
6 5	Further evidence heard for defendant and trial continued to 6/6/40. Holly, J. Notice of entry of order waived.
6 6	Further evidence heard for defendant and trial continued to 6/7/40. Holly, J. Notice of entry of order waived.
6 7	Further evidence heard for defendant and trial continued to 6/10/40. Holly, J. Notice of entry of order waived.
6 10	Further evidence heard for defendant and trial continued to 6/11/40. Holly, J. Notice of entry of order waived.
6 11	Further evidence heard for defendant and trial continued to 6/12/40. Holly, J. Notice of entry of order waived.
6 12	Further evidence heard for defendant and trial continued to 6/13/40. Holly, J. Notice of entry of order waived.
6 13	Further evidence heard for defendant and trial continued to 6/14/40. Holly, J. Notice of entry of order waived.

Date	
1940	
6 14	Further evidence heard for defendant and trial continued to 6/19/40. Holly, J. Notice of entry of order waived.
6 19	Further evidence heard for defendant and concluded. Evidence heard for plaintiff in rebuttal in part and trial continued to 6/20/40. Holly, J. Notice of entry of order waived.
6 20	Further evidence heard for plaintiff in rebuttal and trial continued to 6/21/40. Holly, J. Notice of entry of order waived.
6 21	Further evidence heard for plaintiff in rebuttal and trial continued to 6/24/40. Holly, J. Notice of entry of order waived.
11	
6 24	Filed motion of defendant for readmitting of file wrapper of Dubbs application Ser. No. 208,206 (Def. Ex. 816 for iden.).
6 24	Further evidence heard for plaintiff in rebuttal and concluded and taken under advisement. Parties to file abstract of testimony by 7/1 and submit concurrent briefs by 8/1/40.. Leave to each side to retain own exhibits until 8/1/40. Holly, J.
6 25	Mailed notice to attorneys.
8 9	Filed defendant's exhibits, DX. 176 to 179; 206, 525 to 531, 553 to 565, 588 to 596, 599 to 623, 623a, 624 to 635, 639 to 667, 667a, 668 to 672, 673a and 673b, 674, 675, 675a, 676 to 709, 710a, b, c and d, 711 to 716, 717a and b, 718a and b, 719a and b, 720, 721a and b, 722a and b, 723 to 745, 746a to o, 747, 748, 750 to 773, 774a, 774, 775 to 795, 796a and b, 797 to 801, 802, 802a, 803 to 817, 818a to 818o, 819 to 826, 826a, 827, 827a and b, 828, 831 to 835 and 849 and 850.
1941	
1 21	Arguments heard and continued to 1/22/41. Holly, J.
1 22	Further arguments heard and taken under advisement. Leave to parties to file reply briefs in ten days. Holly, J.
1 25	Mailed notice to attorneys.
7 24	Filed memorandum of Judge Holly.

Date	
1941	
7 29	Issued copy memorandum to Attorney General.
9 10	Filed notice.
9 10	Leave to defendant's attorney to file findings of fact, and conclusions of law. Decree. Holly, J.
9 10	Filed unsigned draft of findings of fact and conclusions of law submitted by defendant.
9 10	Filed unsigned draft of decree submitted by defendant.
9 11	Mailed notice to attorneys.
9 17	By consent time for plaintiff to file objections to defendant's proposed findings of fact and conclusions of law and final decree and to submit additional proposed findings of fact and conclusions of law on behalf of plaintiff extended to and including 10/1/41. Draft. Holly, J.
9 18	Mailed notice to attorneys.
10 1	Filed stipulation.
10 1	Stipulation time for plaintiff to file proposed findings of fact and conclusions of law and objections to defendant's proposed findings of fact and conclusions of law extended to and including 10/3/41. Holly, J.
10 2	Mailed notice to attorneys.
10 14	Findings of fact and conclusions of law entered and filed. Draft. Enter judgment. Plantiff's bill dismissed at plaintiff's cost. Draft. Holly, J.
10 15	Mailed notice to attorneys.
10 30	Final notice to Commissioner of Patents.
12	
11 7	Filed notice of appeal.
11 7	Filed bond on appeal.
11 7	Filed notice to clerk pursuant to rule 10 U. S. C. C. A.
11 10	Mailed copy of notice of appeal to Mr. Thiess, c/o Thiess, Olson & Mecklenburger, 77 West Washington street, Chicago, Ill.
11 26	Filed stipulation.
11 26	By stipulation time for plaintiff to file record on appeal in C. C. A., extended to and including 1/26/42. Draft. Holly, J.
11 27	Mailed notice to attorneys.

Date
1942

1 9 By stipulation time for plaintiff to file record on appeal extended to 2/5/42. Draft. Holly, J.
1 9 Filed stipulation.
1 12 Mailed notice to attorneys.
1 12 Filed designation of contents of short record on appeal.
1 14 Transcript.
1 21 Filed certified copy of order of C. C. A. extending time to file complete record on appeal to 4/6/42.
3 26 Filed Transcript of testimony April 12 to 15, June 1 to 3 and 7 to 9 on Defendant's Motion to dismiss for unclean hands.
3 26 Filed Transcript of testimony on final hearing.
3 26 Filed Plaintiff's Exhibits PX B, 77-78-81-82-83-116-120—1 to 13 inc. 251 to 262 inc.—500 to 524—532 to 552 566 to 587 inc. 597-598-636 to 638 inc. 829 to 830 inc. 836 to 848 inc. and 851.

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14 BILL OF COMPLAINT: File July 1931

[Filed July 22, 1931.]

To the Honorable, the Judges of the United States District Court for the Northern District of Illinois, Eastern Division, in Chancery Sitting:

Your Orator, Universal Oil Products Company, a corporation brings this, its Bill of Complaint, against Winkler-Koch Engineering Company, a corporation organized and existing under the laws of the State of Kansas, and Globe Oil and Refining Company, a corporation organized and existing under the laws of the State of Illinois, for severally and jointly infringing Letters Patent of the United States hereinafter set forth, and alleges and avers as follows:

I.

The plaintiff, Universal Oil Products Company, is a corporation organized and existing under and by virtue of the laws of the State of South Dakota, having a regular place

of business in the City of Chicago, County of Cook and State of Illinois, and the defendant, Winkler-Koch
15 Engineering Company, is a corporation organized under the laws of the State of Kansas, and has a regular place of business in the City of Wichita, in the County of Sedgwick, and the State of Kansas, and the defendant, Globe Oil and Refining Company, is a corporation organized and existing under the laws of the State of Illinois, and has a regular place of business at Lemont, in the County of Cook and State of Illinois, and that in the Northern District of Illinois, Eastern Division, as well as elsewhere in the United States the infringing acts hereinafter complained of have been and are now being committed by said defendants.

II.

That this is a suit in equity brought under the Patent Laws of the United States for the infringement of Letters Patent of the United States, the entire right, title and interest in which are owned by the plaintiff herein, said Letters Patent being as follows:

No. 1,378,307, patented May 17, 1921 to W. H. Young—Apparatus for Cracking and Refining Petroleum Products.

No. 1,392,629, patented October 4, 1921 to Carbon P. Dubbs—Process of Converting Hydrocarbons.

No. 1,484,445, patented February 19, 1924 to Carbon P. Dubbs—Method of Treating Hydrocarbons.

No. 1,534,927, patented April 21, 1925 to Carbon P. Dubbs—Method of Treating Hydrocarbon Oils.

No. 1,537,593, patented May 12, 1925 to Gustav Eloff—Process for Cracking Oil.

No. 1,543,831, patented June 30, 1925 to Carbon P. Dubbs—Apparatus for Treating Hydrocarbon Oils.

No. 1,543,832, patented June 30, 1925 to Carbon P. Dubbs—Process for Treating Hydrocarbon Oils.

No. 1,602,990, patented October 12, 1926 to Robert T. Pollock—Process for Converting Hydrocarbons.

No. 1,686,654, patented October 9, 1928 to Carbon P. Dubbs—Method for Treating Hydrocarbon Oils.

No. 1,764,296, patented June 17, 1930 to Richard Fleming—Method and Apparatus for Treating Hydrocarbons.

17 V.

That on and prior to the 19th day of March, 1919, said Carbon P. Dubbs, then a citizen of the United States, was within the meaning of the statutes of the United States then in force, the first, sole, true and original inventor of a certain new and useful Process of Converting Hydrocarbons not known or used by others in this country and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof or more than two years prior to his application for Letters Patent in the United States therefor and no application for any foreign patent having been filed more than twelve months prior to the filing of the application for Letters Patent in this country and which improvements had not been in public use or on sale in the United States for more than two years prior to his said application for Letters Patent therefor, which issued into Letters Patent No. 1,392,629, and not abandoned to the public.

18 VI.

That on the 19th day of March, 1919, said Carbon P. Dubbs made and filed an application in writing to the Commissioner of Patents for the grant of Letters Patent of the United States upon said invention or discovery of Process of Converting Hydrocarbons, said application bearing Serial No. 283,673; that the invention of said application and any Letters Patent to be issued thereon were duly assigned to plaintiff, Universal Oil Products Company; that on the 4th day of October, 1921, all of the requirements of the statutes of the United States then in force and the rules of the Patent Office of the United States then in force having been complied with, Letters Patent of the United States No. 1,392,629 for Process of Converting Hydrocarbons were duly issued on said application to plaintiff, Universal Oil Products Company, as assignee of the inventor, Carbon P. Dubbs; that said Letters Patent were issued in due form of law in the name of the United States of America under the seal of the United States Patent Office, signed by the Commissioner of Patents, duly recorded and delivered to the plaintiff, Universal Oil Products Company, and were so issued after due examination as to the novelty, patentability and utility of

the invention therein described and payment of the fees required by law; and that said Letters Patent granted to the plaintiff, Universal Oil Products Company, its legal representatives or assigns for the full term of seventeen years from the date thereof, the full and exclusive right and liberty to make, use and sell the invention set forth, described and claimed therein throughout the United States and territories thereof.

22 XI.

That on and prior to the 9th day of December, 1920, Gustav Egloff, then a citizen of the United States, was, within the meaning of the statutes of the United States then in force, the first, sole, true and original inventor of a certain new and useful Process for Cracking Oil not known or used by others in this country and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof or more than two years prior to his application for Letters Patent therefor and no application for any foreign patent having been filed more than twelve months prior to the filing of the application for Letters Patent in this country and which improvements had not been in public use or on sale in the United States for more than two years prior to his said application for Letters Patent thereof which issued into Letters Patent No. 1,537,593 and not abandoned to the public.

XII.

That on the 9th day of December, 1920, the said Gustav Egloff made and filed an application in writing to the Commissioner of Patents for the grant of Letters Patent in the United States upon the said invention or discovery of Process for Cracking Oil, said application bearing serial No. 429,319; that the invention of said application and any Letters Patent to be issued thereon were duly assigned to plaintiff, the Universal Oil Products Company, that on the 12th day of May, 1925, all of the requirements of the Statutes of the United States then in force and the rules of the Patent Office of the United States then in force having been complied with, Letters Patent of the United States No. 1,537,593 for Process for Cracking Oil, were duly

issued on the said application to plaintiff, Universal
23 Oil Products Company as assignee of the inventor,
Gustav Egloff; that said Letters Patent were issued in due form of law in the name of the United States of American under the seal of the United States Patent Office signed by the Commissioner of Patents, duly recorded and delivered to the plaintiff, the Universal Oil Products Company, and were so issued after due examination as to the novelty, patentability and utility of the inventions therein described and payment of the fees required by law; and that the said Letters Patent granted to the plaintiff, the Universal Oil Products Company, its legal representatives or assigns for the full term of seventeen years from the date thereof, the full and exclusive right and liberty to make, use and sell the invention set forth, described and claimed therein throughout the United States and territories thereof.

• • • • •

30 XXIII.

That plaintiff has invested and expended large sums of money and has been to great trouble and expense in and about said inventions of each of said Letters Patent for the
purpose of practicing the same and introducing the
31 same into use, and making the same profitable to the
plaintiff and useful to the public, and that said inventions have been and are now of great benefit and advantage to the plaintiff and the public; and that the public has generally acknowledged and acquiesced in the aforesaid rights of the plaintiff and plaintiff believes it will realize large gains and profits therefrom if infringement by these defendants and their confederates shall be prevented.

XXIV.

That plaintiff has duly notified the defendants and each of them of their infringement of said Letters Patent, but nevertheless the defendants and each of them have continued and now continue to infringe to their own profits and to the great damage and injury of the plaintiff.

XXV.

That, on information and belief said defendants, Winkler-Koch Engineering Company and Globe Oil and Refining Company, and each of them, well knowing the premises and the rights secured to the plaintiff herein and without the license and permission of the plaintiff, and in violation and infringement of the plaintiff's rights under each of said Letters Patent have severally infringed said Letters Patent and have jointly connived and conspired to infringe and have jointly infringed said Letters Patent and each of them in the treatment of hydrocarbon oils in violation of said Letters Patent of the plaintiff after the issuance of said Letters Patent and within six years before the commencement of this suit, willfully and unlawfully and without the license or consent of the plaintiff and against its will, and for which infringing acts said defendants jointly and severally have received great gains, royalties and other profits and are now continuing jointly and severally to receive great profits, royalties, gains
32 and other benefits in violation of the plaintiff's rights in the Letters Patent in suit herein.

And, further, on information and belief, plaintiff alleges that the defendant Winkler-Koch Engineering Company has conspired with the defendant, Globe Oil and Refining Company, to infringe said Letters Patent and as a part of such conspiracy has designed and made drawings of pipe stills, has furnished other plans and specifications upon which such stills are built, has furnished the parts of such stills, has erected such stills for its confederate, Globe Oil and Refining Company, and has otherwise induced its said confederate to infringe the patents of the plaintiff and each of them and unlawfully to violate the rights of the plaintiff thereunder, and without the privilege or consent of the plaintiff with the full knowledge that said apparatus furnished its confederate, Globe Oil and Refining Company, is designed and intended which in operation to appropriate the inventions of said Letters Patent and each of them, and for which unlawful acts it has received and is continuing to receive great gains, royalties and other profits.

XXVI.

On information and belief, plaintiff alleges that the defendant, Globe Oil and Refining Company, has infringed said Letters Patent and each of them by using or causing to be used the inventions of said Letters Patent in the operation of the Winkler-Koch pipe stills operated by the defendant, Globe Oil and Refining Company, and which infringing acts have occurred and are now occurring; and that said defendant, Globe Oil and Refining Company, has furthermore jointly conspired to infringe said Letters Patent and each of them with its confederate, Winkler-Koch Engineering Company, by using or causing to be used pipe stills furnished to the defendant, Globe Oil and Refining Company, by its confederate, Winkler-Koch Engineering Company.

33

XXVII.

That, on information and belief, said defendants and each of them have jointly and severally derived and received and will derive and receive from the aforesaid joint and several infringements, gains, profits and advantages, but to what extent the plaintiff is not informed and cannot therefore set forth; that the plaintiff, by reason of the aforesaid infringement, has been and will be deprived of and prevented from receiving, if such infringement is not restrained by this Court, all of the gains and profits to which the plaintiff is lawfully entitled and which it would have derived and received and would now be deriving and receiving but for the aforesaid infringement; that by reason of the aforesaid infringement, the plaintiff has been irreparably injured and has sustained great loss and damage thereby; and unless the infringement is immediately restrained by an order and writ of injunction issuing out of and under the seal of this Court, further irreparable injury, loss and damage will be caused to plaintiff.

XXVIII.

Wherefore, the plaintiff prays:

(a) That the defendants and each of them be required to make full, true, direct and perfect answer, according to the best of their knowledge, remembrance, information and

belief (but not under oath, an answer under oath being hereby expressly waived as to each of said defendants) to all and singular the matters and things hereinbefore charged;

(b) That the defendants and each of them be required to account for and pay over to your Orator, the plaintiff, the profits realized by said defendants and each of them from the unlawful infringement of said Letters Patent
34 in suit and each of them, and also to pay to the plaintiff the damages which the plaintiff has sustained by reason of the said unlawful acts of said defendants and each of them, and that such damages may be increased three-fold, in accordance with the statutes in such cases made and provided and in the judgment of this Honorable Court as may seem reasonable and equitable by reason of the unlawful acts of these defendants and each of them;

(c) That said defendants and each of them, and the officers, agents, servants, workmen and employees of each of them, may be perpetually restrained from further infringement of each of said Letters Patent No. 1,378,307, No. 1,392,629, No. 1,484,445, No. 1,534,927, No. 1,537,593, No. 1,543,831, No. 1,543,832, No. 1,602,990, No. 1,686,654 and No. 1,764,296.

(d) That your Orator, the plaintiff, may have such further relief as is proper and that said defendants may be compelled to pay all costs of this suit; and

(e) That a subpoena *ad respondendum* and a writ of injunction issue directly to the defendants, Winkler-Koch Engineering Company and Globe Oil and Refining Company.

Universal Oil Products Company,
By Frank L. Belknap,
Solicitor for Plaintiff,
38 S. Dearborn St.
Rm. 1276.

Frank L. Belknap,
Lee J. Gary,
Of Counsel.

35. STIPULATION.

No process was served on Winkler-Koch Engineering Company and no appearance was entered in its behalf. The word "defendant", as herein used, means only the Globe Oil and Refining Company, an Illinois corporation.

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36 ANSWER OF DEFENDANT GLOBE OIL AND REFINING COMPANY. Filed Mar. 2, 1932.

(Filed March 2, 1932.)

To the Honorable, the Judges of the United States District Court for the Northern District of Illinois, Eastern Division:

Now comes the defendant Globe Oil and Refining Company and, answering separately the bill of complaint herein, says:

I. Defendant is without knowledge that plaintiff, Universal Oil Products Company, is a corporation organized and existing under and by virtue of the laws of the State of South Dakota or that it has a regular place of business in the City of Chicago, County of Cook, State of Illinois, and therefore denies the same.

37 Defendant admits that it is a corporation organized and existing under the laws of the State of Illinois and has a regular place of business at Lemont, County of Cook and State of Illinois, but denies that in the said district or elsewhere in the United States it has, at any time, severally or jointly with another or others, committed any acts of infringement as alleged in the bill of complaint, or otherwise.

II. Defendant admits that this is a suit in equity brought under the patent laws of the United States for the alleged infringement of certain purported letters patent of the United States recited in paragraph II of the bill of complaint, but is without knowledge as to whether the entire right, title and interest in said letters patent are owned by the plaintiff, and therefore denies the same.

39 V. Defendant denies that on or prior to March 19, 1919, or at any other time, Carbon P. Dubbs, then a citizen of the United States, was, within the meaning of the statutes of the United States then in force, the first, sole, true or original inventor of a certain or any new and useful process of converting hydrocarbons of purported patent No. 1,392,629, alleged to be therefor; denies that said alleged process had not been known or used by others in this country and not patented or described in any printed publication in this or any foreign country before his alleged invention or discovery thereof or more than two years prior to his alleged application for United States letters patent therefor; denies that no application for any foreign patent therefor had been filed more than twelve months prior to the filing of the alleged application for letters patent in this country; and denies that the alleged improvements had not been in public use or on sale in the United States for more than two years prior to his said alleged application for United States letters patent or that said alleged improvements had not been abandoned to the public.

VI. Defendant denies that on March 19, 1919, said Carbon P. Dubbs made and filed an application in writing to the Commissioner of Patents for the grant of letters patent of the United States on said alleged invention or discovery of process of converting hydrocarbons; denies that the alleged invention of said alleged application and any letters patent to be issued thereon were duly assigned to plaintiff; denies that on October 4, 1921, all of the requirements of the statutes of the United States and the rules of the United States Patent Office then in force having been complied with, purported letters patent of the United States No. 1,392,629 for said alleged process of converting hydrocarbons were duly issued on said alleged application to plaintiff as assignee of the alleged in-
40 ventor; denies that said purported letters patent were issued in due form of law in the name of the United States of America, under the seal of the United States Patent Office and signed by the Commissioner of Patents, or duly recorded or delivered to the plaintiff, or that the same were issued after due examination as to novelty, patentability and utility of the alleged invention therein described and payment of the fees required by law; and denies that said purported letters patent granted to the plaintiff, its legal representatives or assigns, for the full

term of seventeen years from the date thereof, or for any time, the full and exclusive right and liberty, or any right and liberty, to make, use and sell the alleged invention set forth, described and claimed therein, throughout the United States and territories thereof or elsewhere.

• • • • •

43 XI. Defendant denies that on or prior to December 9, 1920, or at any other time, Gustav Egloff, then a citizen of the United States, was, within the meaning of the statutes of the United States then in force, the first, sole, true or original inventor of a certain or any new and useful process for cracking oil of purported patent No. 1,537,593 alleged to be therefor; denies that said alleged method had not been known or used by others in this country and not patented or described in any printed publication in this or any foreign country before his alleged invention or discovery thereof, or more than two years prior to his alleged application for letters patent therefor; denies that no application for any foreign patent therefor had been filed more than twelve months prior to the filing of the alleged application for letters patent in this country; and denies that the alleged improvements had not been in public use or on sale in the United States for more than two years prior to his said alleged application for letters patent or that said alleged improvements had not been abandoned to the public.

XII. Defendant denies that on December 9, 1920, said Gustav Egloff made and filed an application in writing to the Commissioner of Patents for the grant of letters
44 patent of the United States on said alleged invention or discovery of process for cracking oil; denies that the alleged invention of said alleged application and any letters patent to be issued thereon were duly assigned to plaintiff; denies that on May 12, 1925, all of the requirements of the statutes of the United States and the rules of the United States Patent Office then in force having been complied with, purported letters patent of the United States No. 1,537,593 for process for cracking oil were duly issued on the said alleged application to plaintiff as assignee of the alleged inventor; denies that said purported letters patent were issued in due form of law in the name of the United States of America, under the seal of the United States Patent Office and signed by the Commissioner of Patents, or duly recorded or delivered to the plaintiff, or that the same were issued after due examina-

tion as to novelty, patentability and utility of the alleged invention therein described and payment of the fees required by law; and denies that said purported letters patent granted to the plaintiff, its legal representatives or assigns, for the full term of seventeen years from the date thereof, or for any time, the full and exclusive right and liberty, or any right and liberty, to make, use and sell the alleged invention set forth, described and claimed therein, throughout the United States and territories thereof or elsewhere.

* * * * *

52 XXIII. Defendant denies each and every of the allegations contained in paragraph numbered XXIII of the bill of complaint, and specifically denies that plaintiff has invested and expended large sums of money and been to great trouble and expense in and about said alleged inventions of each of said purported letters patent for the purpose of practicing the same and introducing the same into use and making the same profitable to plaintiff and useful to the public or otherwise, or that said alleged inventions have been and now are of great benefit and advantage or of any benefit or advantage to the plaintiff and the public, or that the public has generally or otherwise acknowledged and acquiesced in the alleged rights of the plaintiff. Defendant avers that the methods, processes and apparatuses described, shown and claimed in said purported patents are entirely lacking in any practical or commercial utility in connection with the producing of gasoline or similar products and are inoperative for producing gasoline from heavier oils. Defendant is not advised with respect to plaintiff's belief as to realizing large gains and profits from said alleged inventions and purported patents, but denies that defendant has infringed any of said purported patents or that it has confederated with another or others to infringe the same, or that plaintiff is entitled to any profits, gains, damages or advantages from defendant or because of any acts or doings of defendant.

53 XXIV. Answering paragraph XXIV of the bill of complaint, defendant denies that it has been duly notified of any alleged infringement of said purported letters patent or that it has infringed or continued or now continues to infringe any of said purported letters patent, to its own profit or to the great or any damage and injury to plaintiff, or otherwise. Defendant denies that it has

ever infringed any of said purported letters patent or any alleged rights of plaintiff thereunder, or that it has ever deprived plaintiff of any profit lawfully belonging to plaintiff, or that it has ever damaged or injured plaintiff in any way.

XXV. *Defendant denies each and every of* the allegations contained in paragraph XXV of the bill of complaint, and specifically denies that, well knowing the premises and the alleged rights secured to the plaintiff and without the license and permission of the plaintiff and in violation and infringement of the plaintiff's alleged rights under each of said purported letters patent, it has severally, jointly or otherwise infringed said purported letters patent or connived or conspired to infringe the same in the treatment of hydrocarbon oils or otherwise in violation of said purported letters patent and within six years before the commencement of this suit or at any time. Defendant denies that it has wilfully and unlawfully and without the license or consent of the plaintiff and against its will, or otherwise, infringed any of said purported letters patent, and denies that by reason of any alleged infringing acts it has jointly or severally received great, or any, gains, royalties or other profits, or that it is now continuing jointly or severally to receive great or any profits, royalties, gains or other benefits in violation of the plaintiff's alleged rights in the purported patents sued on.

54 Defendant denies that it has conspired with the Winkler-Koch Engineering Company or others to infringe said purported letters patent, or that, as a part of any such alleged conspiracy, the Winkler-Koch Engineering Company has designed and made drawings of pipe stills for this defendant, or has furnished other plans and specifications upon which such stills are built, or has furnished the parts for such stills, or has erected such stills for the defendant, or has otherwise induced this defendant to infringe in any manner the respective purported patents of the plaintiff or unlawfully to violate the alleged rights of the plaintiff thereunder. Defendant denies that the apparatus it has used or now uses was or is designed or intended when in operation to appropriate the alleged inventions of any of said purported letters patent, and denies that it did or does so.

XXVI. Defendant denies each and every of the allegations contained in the paragraph numbered XXVI of the bill of complaint, and specifically denies that it has ever

infringed said purported letters patent sued on, or any of them, by using or causing to be used any of the alleged inventions of said purported letters patent in the operation of its stills or otherwise, and denies that it has ever committed or is now committing any infringing acts, or that it has jointly conspired to infringe said letters patent, or any of them, with the Winkler-Koch Engineering Company or others, by using or causing to be used pipe stills furnished to the defendant by the Winkler-Koch Engineering Company or others. Defendant denies that it has ever confederated or conspired with the Winkler-Koch Engineering Company or others to infringe the plaintiff's purported patents, and denies that it has infringed or does so infringe.

XXVII. Defendant denies each and every of the allegations contained in paragraph XXVII of the bill of
55 complaint, and specifically denies that defendant has jointly or severally derived and received, or will derive and receive, from any infringement as alleged, or otherwise, any gains, profits and advantages; denies that by reason of any alleged infringement of defendant the plaintiff has been and will be deprived of and prevented from receiving, if defendant is not restrained in accordance with the bill of complaint, any gains and profits to which the plaintiff is lawfully entitled and which it would have derived and received and would now be deriving and receiving but for the alleged infringement by defendant; and defendant denies that by reason of any alleged infringement of said purported letters patent or other alleged acts and doings by defendant, the plaintiff has been irreparably or at all injured or has sustained great loss and damage or any loss or damage thereby, or that unless defendant is restrained from any of its acts and doings by an order and writ of injunction issuing out of and under the seal of this court, further or any irreparable injury, loss or damage will be caused to plaintiff.

XXVIII. Further answering, this defendant denies that purported letters patent Nos. 1,378,307, 1,392,629, 1,484,445, 1,534,927, 1,537,593, 1,543,831, 1,543,832, 1,602,990, 1,686,654 and 1,764,296 here in suit are valid and alleges that said purported letters patent, and each of them, are void for the following reasons:

(a) That the alleged inventions described in said several purported letters patent, and each of them, do not, in view of the state of the art as it existed prior to the re-

spective dates of said alleged inventions, contain any patentable novelty, but consist in mere adaptations of well-known devices to the required uses and involve only mere mechanical skill;

56 (b) That said W. H. Young, Carbon P. Dubbs, Gustav Egloff, Robert T. Pollock and Richard Fleming were not the first, true and original inventors of the respective things alleged to be patented by said several purported letters patent, or any of them, or any material or substantial part thereof, and this defendant alleges that said alleged inventors in applying for and obtaining said respective purported letters patent unlawfully and wrongfully applied for and obtained patents in their own names, respectively, for that which in fact was devised by others;

(c) That said W. H. Young, C. P. Dubbs, G. Egloff, R. T. Pollock and R. Fleming were not the first, true and original inventors of the alleged inventions set forth in the said respective purported letters patent, but were preceded by others, who, anterior to the acts of the said alleged inventors, respectively, had made and perfected said alleged inventions;

(d) That the alleged inventions and improvements claimed in said purported letters patent were not at the respective dates of application therefor or at the respective dates of the supposed inventions or discoveries thereof by said alleged inventors, patentable arts, machines, manufactures, compositions, of matter or improvements under the Acts of Congress in such case made and provided;

(e) That the alleged inventions set forth in said respective purported letters patent do not possess any utility whatsoever;

(f) That the alleged inventions set forth in said respective purported letters patent were abandoned and passed into the possession of the public before the date of the alleged infringement charged in said bill of complaint, and that said respective alleged inventions were

57 abandoned prior to the respective filing dates of the applications upon which said several purported letters patent were granted;

(g) That the grants of said purported letters patent, and each of them, are unlawful, because certain essential prerequisites required by the Acts of Congress were not fulfilled and because such grants as made exceeded the

jurisdiction of the Patent Office, the Commissioner of Patents and other officers purporting to have authority to execute said grants;

(h) That said purported letters patent, and each of them, are void and invalid because the alleged inventions purporting to be covered thereby are not included in any one of the classes of invention protected by the Acts of Congress;

(i) That said W. H. Young, C. P. Dubbs, G. Egloff, R. T. Pollock and R. Fleming did not act in good faith toward the public in disclosing their respective alleged inventions in the specifications annexed to said respective purported letters patent, and for the purpose of deceiving the public the descriptions of the alleged inventions in said specifications were made to contain less than the whole truth relative to said alleged inventions or more than was necessary to produce the desired effect, for the purpose and with the intent of deceiving the public; that said descriptions contained in said purported letters patent were designed to mislead the public as to the character of the real alleged inventions and to prevent the public from employing the said alleged inventions in their completeness and to compel the public to employ said alleged inventions at a disadvantage as compared with said alleged inventors, and that said wilful efforts of said alleged inventors to deceive the public have forfeited all rights supposed to be secured by said purported letters patent;

58 (j) That the description contained in each of said purported letters patent is ambiguous and the disclosure of the alleged inventions therein is not in such full, clear, concise and exact terms as to enable persons skilled in the art to practice the same without the exercise of their own inventive faculties;

(k) That the claim of said purported letters patent are excessive in breadth and scope and have not been cured within any reasonable time by disclaimer;

(l) That the claims set forth in said purported letters patent are ambiguous;

(m) That the plaintiff herein possesses neither legal nor equitable title to said purported letters patent, or any of them, sufficient to support and sustain said bill of complaint and the remedies sought to be secured thereby;

(n) That if plaintiff or its predecessors in ownership

ever had any lawful rights under said purported letters patent, it is now estopped from asserting such rights, because the plaintiff and its predecessors have stood inactive without equitable excuse for many years with full knowledge that others were making, using and selling devices embodying said alleged inventions and with full knowledge that defendant was making, using and selling the devices infringement of which is charged herein, without taking the steps which plaintiff was in equity bound to take to preserve its supposed rights, and that plaintiff is guilty of laches in the premises;

(o) That the alleged inventions described and claimed in said respective purported letters patent are not substantially the same inventions that are described and claimed in and comprehended by the respective applications as originally filed in the United States Patent Office; that after the respective patentees of said pur-
59 ported letters patent had made oath to said original applications and after the said applications had been filed in the United States Patent Office, substantial and material additions thereto, variations and changes therein were made and new matter was unlawfully introduced into said applications and each of them;

(p) That the claims of said purported letters patent, and each of them, do not cover valid and patentable combinations but embrace mere aggregations of elements forming no true and proper combination and having no co-operation in a patentable sense, and are not patentable in law;

(q) That long prior to the making of the alleged inventions or improvements described and claimed in said purported letters patent the same, or substantial and material parts thereof, were described and shown in the letters patent and publications enumerated in the following list; that more than two years prior to the application date of the respective applications upon which said purported letters patent here in suit were issued the alleged inventions described and claimed therein, or substantial and material parts thereof, were described and shown in the letters patent and publications set forth in the following list, which bear date more than two years prior to the filing date of the respective applications for said purported letters patent in suit; that prior to the alleged inventions or improvements de-

scribed and claimed in said purported letters patent in suit the same, or substantial and material parts thereof, were invented and/or put into public use and on sale by or were known to the inventors, patentees and parties mentioned in the letters patent set forth in the following list, at the respective places of residence therein given of the inventors, patentees and parties; that before the
60 alleged invention or discovery of the alleged inventions of said respective purported letters patent in suit the same or substantial and material parts thereof were patented in the letters patent set forth in the following list, and many others which this defendant has not as yet ascertained but prays leave to insert in this answer by amendment as soon as discovered; said above-mentioned list being as follows:

As to purported Dubbs patent in suit No. 1,392,629:

United States Patents:

No. 342,564,	Benton,	May 25,1886.
No. 477,153,	Pielsticker,	June 14, 1892.
No. 1,138,260,	Testelin & Renard,	May 4, 1915.
No. 1,170,884,	Edwards,	Feb. 8, 1916.
No. 1,175,909,	Hall,	Mar. 14, 1916.
No. 1,175,910,	Hall,	Mar. 14, 1916.
No. 1,194,289,	Hall,	Aug. 8, 1916.
No. 1,239,423,	Smith,	Sept. 4, 1917.
No. 1,245,930,	Lambert,	Nov. 6, 1917.
No. 1,249,278,	Ellis,	Dec. 4, 1917.
No. 1,250,799,	Coast, Jr.	Dec. 18, 1917.
61 No. 1,260,584,	Sherman,	Mar. 26, 1918.
No. 1,288,711,	Sherman,	Dec. 24, 1918.
No. 1,320,376,	Brownlee,	Nov. 4, 1919.
No. 1,345,740,	Biddison & Boyd,	July 6, 1920.
No. 1,365,604,	Rittman & Dutton,	Jan. 11, 1921.
No. 1,390,002,	Wellman,	Sept. 6, 1921.
No. 1,407,619,	Alexander,	Feb. 21, 1922.
No. 1,740,691,	Greenstreet,	Dec. 24, 1929.

British Patents:

No. 1,308 of 1891, Pielsticker.
No. 15,084 of 1915, Trumble.

64 As to purported Egloff patent in suit No. 1,537,593:

United States Patents:

No. 954,575,	Lang,	Apr. 12, 1910.
No. 1,288,711,	Sherman,	Dec. 24, 1918.
No. 1,324,983,	Rosenbaum,	Dec. 16, 1919.
No. 1,619,921,	Egloff,	Mar. 8, 1927.
No. 1,740,691,	Greenstreet,	Dec. 24, 1929.

68 (r) That the alleged inventions set forth and claimed in the following purported letters patent in suit, and every substantial and material part thereof, were, prior to any dates of invention of said alleged inventions, known, used, invented and reduced to practice in the United States by others and at their respective places of residence, mentioned in the patents specified below, who filed in the United States Patent Office applications for letters patent, with specifications and drawings, in which said alleged inventions and every substantial and material part thereof were fully described and illustrated, prior to the dates of filing of the applications for said respective purported letters patent in suit, which said prior applications resulted in the United States patents specified below and were filed on the respective dates and by the respective parties alleged in said resulting patents:

As to purported Dubbs patent in suit No. 1,392,269:

United States Patents:

No. 1,320,376,	Brownlee,	Nov. 4. 1919.
No. 1,345,740,	Biddison & Boyd,	July 6, 1920.
No. 1,365,604,	Rittman & Dutton,	Jan. 11, 1921.
No. 1,390,002,	Wellman,	Sept. 6, 1921.
No. 1,407,619,	Alexander,	Feb. 21, 1922.
No. 1,740,691,	Greenstreet,	Dec. 24, 1929.

70 As to purported Egloff patent in suit No. 1,537,593:

United States Patents:

No. 1,288,711,	Sherman,	Dec. 24, 1918.
No. 1,324,983,	Rosenbaum,	Dec. 16, 1919.
No. 1,619,921,	Egloff,	Mar. 8, 1927.

73 XXXI. Defendant avers that the purported letters patent in suit and each of them are invalid and void

for the reason that the alleged inventions, devices, apparatus, methods and processes disclosed therein are inoperative and incapable of accomplishing the intended results or any practical, commercial or useful purpose, and are therefore lacking in that utility required by the statutes.

74 XXXII. Defendant avers that plaintiff is estopped from asserting that said purported letters patent in suit, and each of them, or any of their claims is infringed by any process or apparatus used by the defendant, for the reason that the patentees and owners thereof in the course of the proceedings in the Patent Office resulting in the grant of such purported patents limited and confined the scope of such purported patents and their claim in order to avoid the objections of the Patent Office and to obtain the grants thereof, and cannot now assert a broader construction of said claims or a construction broad enough to include defendant's process and apparatus.

XXXIII. Defendant avers that said purported letters patent in suit, and each of them, are invalid and void because the apparatus disclosed in the specifications (including the drawings) is impracticable, inoperative and dangerous to life and limb in any attempted practical or commercial operation thereof, wherefore the alleged inventions set forth in said purported patents are wholly lacking in utility, as required by the statutes and decisions of the courts.

XXXIV. Further answering, defendant charges and alleges, on information and belief, that the plaintiff since its organization has been largely engaged in filing applications for patents in the United States Patent Office and in foreign countries on devices, apparatuses, methods and processes relating to the conversion of hydrocarbons into lighter oils and gasoline; that plaintiff has filed hundreds of such applications, in which the alleged inventions shown, described and claimed are in vague, indefinite and nebulous language, many of which comprise merely vague, omnibus disclosures, which when later appearing in patents as alleged divisions and continuations of such omnibus disclosures completely fail to teach the public any

75 satisfactory way of converting heavy hydrocarbons into lighter oils or gasoline; that numerous of these applications have been kept pending by the plaintiff in the United States Patent Office over long periods of time to enable the plaintiff to watch the advancing wave of improvement made in the commercial industry

in connection with the cracking of heavy hydrocarbons into gasoline and to enable the plaintiff to utilize such antiquated and indefinite applications for the basis of unjustified claims in an effort to create a patented industry in this country without contributing anything to the real advancement of the art of cracking hydrocarbons into gasoline and for the purpose of illegally expanding the disclosures of such vague and indefinite specifications to include therein the commercial and operating improvements and developments of others working independently and without knowledge of such applications as had been filed by the plaintiff; that plaintiff has for many years employed and used attorneys, detectives and spies for the purpose of surreptitiously and otherwise obtaining full information concerning the various apparatuses, processes and methods successfully used by manufacturers in their production of gasoline, for the purpose of acquiring full information as to the construction and operation of successfully operated plants, with the design, purpose and intent of injecting into some one or more of its hundreds of applications for patents all of the various mechanisms, apparatuses, processes and methods of others and with the purpose of wrongfully and fraudulently obtaining patents thereon and later asserting these patents against the very persons, firms and corporations from whom they obtained such information as well as others; that plaintiff has taken out a number of patents based on information thus improperly and wrongfully acquired from others, among which are the
76 purported patents upon which it has brought this suit; that as a result of the information surreptitiously and otherwise obtained from gasoline manufacturers plaintiff has wrongfully and unlawfully, and contrary to the statutes of the United States and rules of practice of the Patent Office and after its applications were filed, revised and converted various of its applications, including certain of the Dubbs purported patents herein asserted by the plaintiff, to cover independent and individual improvements developed by others, and not the invention of said Dubbs or plaintiff's other applicants, and fundamentally and radically different from the alleged inventions originally asserted and claimed in plaintiff's various omnibus applications and based upon theories entirely inconsistent and in conflict with the statements of

the applicants and their attorneys made at the initial stage of the prosecution of such applications, with the purpose and intent of preventing the persons from whom such information was obtained from using their own apparatuses, methods and processes; that plaintiff did not primarily engage in the manufacture of gasoline but in the wrongful filing of omnibus, indefinite and vague patent applications, the obtaining and assertion of purported patents and hundreds of pending secret applications, and in coercing and compelling others to take licenses under such patents and applications by intimidating, or attempting to intimidate, gasoline manufacturers, investors therein and the public at large by improper threats of infringement suits, thereby harassing this defendant and other gasoline manufacturers and thereby impeding the production of gasoline and increasing the price to a large and ever-growing gasoline-consuming public in this and other countries; wherefore plaintiff is in this court of equity with unclean hands and is chargeable with such fraudulent and uncon-
77 scionable conduct in the prosecution and procurement of said purported patents and in its dealings with respect thereto since their issuance as precludes a court of equity from granting it any relief, and the bill of complaint should be dismissed.

• • • • •

90 XLVIII. Defendant avers that said Pollock purported letters patent in suit No. 1,602,990 and said Dubbs purported letters patent in suit Nos. 1,392,629, 1,543,831 and 1,543,832 are invalid and void because the subject-matter claimed therein is wholly different from that originally presented in the respective applications as filed, that said claimed subject-matter in the said respective purported patents is a departure of invention from that originally presented and that it (the subject-matter now claimed in said respective purported patents) is new matter in said applications, wherefore said purported patents are wholly invalid and void.

XLIX. Defendant charges and alleges that the bill of complaint fails to state a cause of action cognizable in equity, and denies that plaintiff is entitled to any of the relief sought and prayed for in the bill of complaint; denies plaintiff's right to injunction, perpetual or other-

wise, or to damages, or profits, or costs or to an accounting, or to have three-fold damages as prayed.

Wherefore, defendant prays that the bill of complaint be dismissed for want of equity at the costs of plaintiff.

Jones, Addington, Ames & Seibold,
Solicitors for Defendant.

J. Bernhard Thiess,
Robert Lewis Ames,
Thorley von Holst,
Of Counsel.

91 STIPULATION.

On October 13, 1936 a bill in the nature of a supplemental bill was filed by Universal Oil Products Company, a Delaware corporation, the effect of which was to substitute said Universal Oil Products Company (Delaware) for the original plaintiff, Universal Oil Products Company, a South Dakota corporation. The complaint alleged inter alia that Universal Oil Products Company (South Dakota) had assigned the patents in suit and all rights of action thereunder to Universal Oil Products Company (Delaware) on January 14, 1936. On September 23, 1936 Globe Oil and Refining Company filed its answer thereto, pleading no knowledge as to the alleged facts just stated.

Filed May 11, 1932.

92 **AMENDMENT TO DEFENDANT'S ANSWER.**

(Filed May 11, 1932.)

Now comes the defendant, Globe Oil and Refining Company, and amends its original answer to the bill of complaint filed herein, as follows:

1. By adding immediately after the list of United States Letters Patent, set forth (as pertaining to the purported Dubbs patent No. 1,392,629) in Paragraph XIII) (q), on pages 25 and 26 of the original printed answers, the following additional United States Letters Patent:

No.	Patentee	Date
1,239,099	Hall	Sept. 4, 1917
1,239,100	Hall	Sept 4, 1917
1,242,795	Hall	Oct. 9, 1917
1,242,796	Hall	Oct. 9, 1917
1,281,884	Trumble	Oct. 15, 1918
1,285,136	Hall	Nov. 19, 1918
1,396,999	Ellis	Nov. 15, 1921
1,840,012	Behimer	Jan. 5, 1932
1,883,850	Behimer	Oct. 18, 1932
2,027,014	Behimer	Jan. 7, 1936

93 2. By adding immediately after Paragraph XIII (r) on page 36 of the original printed answer the following:

XIII (s) That the alleged invention set forth and claimed in the said purported Letters Patent No. 1,392,629, and every substantial part thereof, was invented, known, and reduced to practice by Otto Behimer of Port Arthur, Texas, at the refinery of The Texas Company at Port Arthur, Texas; and that the said Carbon P. Dubbs was not, and is not, the first, original, and sole inventor of that which is alleged to be patented by purported Letters Patent No. 1,392,629, and that the said Dubbs surreptitiously and unjustly obtained said purported Letters Patent for that which in fact was invented by the said Otto Behimer of Port Arthur, Texas, at Port Arthur, Texas, who was reasonably diligent in perfecting and adapting the same and in procuring patents upon said alleged invention.

XIII (t) That long prior to the making, by the said

Carbon P. Dubbs of the alleged invention or improvement described and claimed in the said purported Letters Patent No. 1,392,629 the same, or substantial and material parts thereof, were known to, used and put into public use
94 and on sale by The Texas Company of New York, N. Y., and its servants, agents, and employees, at its refineries at Bayonne, New Jersey, and Port Arthur, Texas, and elsewhere in the United States.

• • • • •

98 Globe Oil & Refining Company,
By Ames, Thiess, Olson and Mecklenburger,
Solicitors.

Arthur C. Denison,
J. Bernhard Thiess,
Thorley von Holst,
Sidney Neuman,
Solicitors and Of Counsel.

99 AGREED STATEMENT AS TO EXHIBITS.

In this record the exhibits, whether plaintiff's or defendant's, are identified by consecutive numbers. The prefix "PX" indicates a plaintiff's exhibit and the prefix "DX" a defendant's exhibit. The page in the original transcript where an exhibit was offered or received in evidence is not noted since most of the record is reproduced in abstract form and all exhibits included in the offered record were duly offered and received in evidence, except where referred to as "for identification" in which case they are included in the record under the provisions of Civil Rule 43 (c).

100 EXCERPTS FROM EVIDENCE TAKEN ON THE RES ADJUDICATA ISSUE.

(March, April, July and December, 1937.)

101 ROBERT J. DUNHAM, SR.:

Direct Examination by Mr. Reichmann.

92 I am a resident of Chicago. I am not engaged in business at the present time. In public life I am serving as a Commissioner and President of the Chicago

93 Park District. I was connected with Universal Oil Products Company from 1914 to 1931. I was Vice President from 1929 to the time of my resignation. From 1921 I devoted all of my time to the company's affairs in their Chicago office.

101 Q. I call your attention particularly to the part of the exhibits having reference to a group being organized for the purpose of defending the suits pending or that might be brought by Universal Oil Products Company against refiners or others charged with infringement of the Universal Patents by the operation of Winkler-Koch process or apparatus. Do you recall the circumstances of that being brought to your attention on or about the time that these letters bear date?

102 DAVID PHILLIP HAMILTON:

Direct Examination by Mr. Blenko.

6* I live at Shreveport, Louisiana and am President of the Root Petroleum Company, a Delaware corpora-
7 tion. Root Petroleum Company was formerly called Root Refining Company, but this name was changed in 1935. Root Refining Company was one of the defendants in a certain proceeding in the United States District Court for the District of Delaware, entitled Universal Oil Products Company, plaintiff, *versus* Winkler-Koch Engineering Company and Root Refining Company, defendants, Equity No. 716, and in a proceeding similarly entitled, Equity No. 895.

13 We agreed to pay $5,000 to a defense fund for patent litigation and later agreed to pay a certain sum, which was changed one or more times to a varying amount per barrel of gasoline produced, into the defense fund. That was not, however, covered by any license agreement or contract. The sum of $5,000 was
14 paid in two installments. The first installment of $2500.00 was paid early in 1929. The second installment was some months later, but I cannot remember the date.

15 In the early part of March, 1929, a meeting was held in the offices of the Winkler-Koch Engineering

* Refers to Deposition page number.

Company in Wichita, Kansas. There were present at the meeting representatives from six to ten companies who were then operating the Winkler-Koch stills or who were contemplating operating them or had them under construction. The meeting was held for the
16 purpose of discussing a fund to be raised to meet expenses of any suits brought against users of Winkler-Koch plants. At that meeting it was suggested that a fund be raised by each plant user contributing $5,000 for each still. I did not agree at the meeting to pay this amount, but later I did agree with Mr. Koch that we would join the defense group and pay $5,000 into the defense fund.

29 103 I cannot say whether the Sinclair Company was represented at the meeting. My recollection is that the Sinclair Company had agreed to pay into the defense fund, if it was formed, the sum of $25,000.

35 Subsequent to the meeting I agreed with the Winkler-Koch Patent Company that we would pay into the defense fund an amount of 2½ cents per barrel on cracked gasoline production. I was informed that other companies using Winkler-Koch stills had agreed to do likewise. I had been furnished with a statement showing the amounts that had been paid in.

104 WILLIAM HENRY LAMPRECHT II:

7* *Direct Examination by Mr. Blenko.*

I am a resident of Cleveland, Ohio and I am President of the National Refining Company. I am appearing under subpoena. I have been President of National Refining Company since August, 1935; prior to that time I was Vice-President.

The National Refining Company operates a Winkler-Koch cracking unit which was installed for it by Winkler-Koch Engineering Company.

13 The National Refining Company has paid royalties to the Winkler-Koch Patent Company on the production of the Winkler-Koch stills and continues to make such payments. I believe that the rate has been 2.5¢

* Refers to Deposition page number.

per barrel since the execution of an agreement of January, 1931.

105 HENRY F. HEIL:

Direct Examination by Mr. Blenko.

58* I live in Cleveland, Ohio, and am Vice-President and Treasurer and also a Director of the National Refining Company. I have been a director since 1927 or 1928.

59 The following is a tabulation showing the amount of payments made by National Refining Company to the Winkler-Koch Patent Company:

61 Payments to Winkler-Koch Patent Co. by the National Refining Co.

		Coffeyville	Findlay
1930	8 months		$2,328.43
1931	7 months for Coffeyville	$1,605.31	3,320.12
1932		9,417.32	5,060.50
1933		9,959.48	5,450.14
1934		9,891.58	5,309.40
1935		9,931.14	5,361.98
1936		10,216.35	4,846.47
1937	2 months	1,723.13	1,022.61
		52,744.31	32,699.65
		32,699.65	
		$85,443.96	

* Refers to Deposition page number.

106 FRED C. KOCH:

Direct Examination by Mr. Hall.

6* I was one of the organizers of the Winkler-Koch Engineering Company. I believe it was organized about the summer of 1927.

13 I spoke of the Winkler-Koch Patent Company being trustee for certain funds. These funds were contributions from various users of our stills. They were used to pay the attorneys and experts in any cases that were brought against certain of our users for patent infringement.

46 DQ. 185. I understand that in compliance with my request you produce a license agreement between Winkler-Koch Engineering Company and certain refiners as follows: that of April 1, 1929 to the Skelly Oil Company; that of April 1, 1929 to Eldorado Refining Company; that of April 1, 1929 to Anderson-Prichard Oil Corporation; that of April 1, 1929 to Chalmette Oil Corporation; that of April 1, 1929 to Champlin Refining Company; that of April 21, 1929 to Globe Oil & Refining Company, a corporation of Oklahoma; that of November 20, 1929 to the National Refining Company, a corporation of Ohio; that of the 19th day of August, 1930, to the National Refining Company, a corporation of Ohio; that of the 25th day of August, 1930, the Magnolia Petroleum Company; that of June 3, 1931 to Republic Oil & Refining Company; that of January 21, 1931, to the National Re-
47 fining Company, a corporation of Ohio; that of October 27, 1931, Garber Refining Company; that of November 3, 1931, to Standard Oil Company of Kansas; that of August, 1932 to Hi-Octane Refining Company? Is that correct?

A. Yes, sir.

DQ. 186. Are each of those agreements, in substance, the same as a license agreement of February 21, 1930 between the Winkler-Koch Engineering Company and Globe Oil & Refining Company of Illinois which have been offered in evidence as PX80?

47 107 A. Without having read them I would say they are substantially the same.

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* Refers to Deposition page number.

DQ. 187. You mean without having read them at this moment?

A. This moment.

DQ. 188. Each of these agreements contains a paragraph stating an agreement and undertaking by the licensee, does it not, reading, in substance, as follows:

"To grant, and it does hereby grant unto Winkler-Koch Patent Company, a corporation of Kansas, having a place of business at Wichita, Kansas, the right (but not the obligation) to defend, at the expense of said Patent Company any suit or suits charging infringement by process or apparatus of the (1) still referred to in paragraph (1)"?

A. Yes, sir; I believe they all contain that paragraph.

108 STIPULATION.

337-44 The following tabulation closely approximates the amounts expended in various litigations out of the defense fund as of December, 1937:

Donnelly *vs.* Eldorado
In Equity No. 1584-N
filed 7-14-32
On

Donnelly	—	No. 1,712,789.....	$ 9,165.00

Gasoline *vs.* Skelly
In Equity No. 557-N
Filed 8-8-29
and
In Equity 725-N
Filed 10-22-32
On

Black	—	No. 1,426,813	
Black	—	No. 1,456,419	
Cross	—	No. 1,734,079	
Rosenbaum	—	No. 1,324,983	
Howard & Loomis	—	No. 1,869,337.....	$ 78,399.00

Gasoline *vs.* Champlin
In Equity No. 1336
Filed 3-18-33
On

Rosenbaum	—	No. 1,324,983	
Cross	—	No. 1,734,079	
Howard & Loomis	—	No. 1,869,337.....	$113,505.00

Gasoline *vs.* Globe (Oklahoma)
In Equity No. 1568E
Filed 12-26-33
and
In Equity No. 1762
Filed 7-19-35
On

Rosenbaum	—	No. 1,324,983	
Black	—	No. 1,456,419	
Cross	—	No. 1,734,079	
Howard & Loomis	—	No. 1,869,337	
Black	—	No. 1,971,248.....	$ 6,620.00

Gasoline *vs.* National
In Equity No. 1398
Filed 12-28-33
On

Rosenbaum	—	No. 1,324,983	
Cross	—	No. 1,734,079	
Howard & Loomis	—	No. 1,869,337.....	$ 26,831.00

Standard (Ind.) *vs.* Globe (Ill.)
In Equity No. 10770
Filed 8-10-31
and
In Equity No. 12,503
Filed 11-4-32
On

Lewis & Cooke	—	No. 1,392,584	
Burton & Clark	—	No. 1,448,254	

Shaefer & Brown	—	No. 1,851,526.....	$154,792.00

Standard *vs.* Globe (Kansas)
In Equity No. 796-N
Filed 12-30-33
On

Lewis & Cooke	—	No. 1,392,584	
Shaefer & Brown	—	No. 1,851,526	
Snow & Sullivan	—	No. 1,918,991.....	$ 1,636.00

Standard *vs.* Rock Island
In Equity No. 4462
Filed 1-10-33
On

Lewis & Cooke	—	No. 1,392,584	
Burton & Clark	—	No. 1,448,254	
Shaefer & Brown	—	No. 1,851,526.....	$ 1,633.00

Texas *vs.* Republic
In Equity No. 557
Filed 3-4-33
On

Hall	—	No. 1,175,909	
Hall	—	No. 1,239,099	
Hall	—	No. 1,239,100	
Hall	—	No. 1,242,795	
Behimer	—	No. 1,840,012	
Behimer	—	No. 1,883,850.....	$ 16,274.00

Texas *vs.* Garber
In Equity No. 1456
Filed 3-6-33
and
Texas *vs.* Omar
In Equity No. 1954
Filed 4-21-37
On

Hall	—	No. 1,175,909	
Hall	—	No. 1,239,099	
Hall	—	No. 1,239,100	
Hall	—	No. 1,242,795	
Behimer	—	No. 1,840,012	
Behimer	—	No. 1,883,850.....	$ 10,890.00

Texas *vs.* Anderson-Prichard
In Equity No. 1485
Filed 5-5-33
On

Behimer	—	No. 1,840,012	
Behimer	—	No. 1,883,850.....	$ 9,271.00

Texas *vs.* Chalmette
In Equity No. 11109
Filed 4-6-33
On

Behimer	—	No. 1,840,012	
Behimer	—	No. 1,883,850.....	$ 9,649.00

Texas *vs.* Eldorado
In Equity No. 863—
Filed 6-22-35
On

Behimer	—	No. 1,840,012	
Behimer	—	No. 1,883,850.....	$ 482.00

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Texas *vs.* Champlin
In Equity No. 1939
Filed 3-1-37
On

Behimer	—	No. 1,840,012	
Behimer	—	No. 1,883,850.....	$ 508.00

Universal *vs.* Root
In Equity No. 716—Filed 3 11-29
and
In Equity No. 895—Filed 7-7-31
On

Young	—	No. 1,378,307	
Dubbs	—	No. 1,484,445	
Dubbs	—	No. 1,534,927	
Egloff	—	No. 1,537,593	
Pollock	—	No. 1,602,990	
Dubbs	—	No. 1,686,654	
Dubbs	—	No. 1,392,629	
Dubbs	—	No. 1,543,831	
Dubbs	—	No. 1,543,832	
Fleming	—	No. 1,764,296.....	$276,937.00

Universal *vs.* White Eagle
In Equity No. 717 and Filed 3-11-29
In Equity 894—Filed 7-7-31
On

Young	—	No. 1,378,307	
Dubbs	—	No. 1,484,445	
Dubbs	—	No. 1,534,927	
Egloff	—	No. 1,537,593	
Pollock	—	No. 1,602,990	
Dubbs	—	No. 1,686,654	
Dubbs	—	No. 1,392,629	
Dubbs	—	No. 1,543,831	
Dubbs	—	No. 1,543,832	
Fleming	—	No. 1,764,296.....	$ 59,382.00

Universal *vs.* Globe (Delaware)
In Equity No. 784
Filed 4-11-30
and
In Equity No. 892
Filed 7-7-31
On

Young	—	No. 1,378,307	
Dubbs	—	No. 1,484,445	
Dubbs	—	No. 1,534,927	
Egloff	—	No. 1,537,593	
Dubbs	—	No. 1,543,831	
Dubbs	—	No. 1,543,832	
Pollock	—	No. 1,602,990	
Dubbs	—	No. 1,686,654	
Dubbs	—	No. 1,392,629	
Fleming	—	No. 1,764,296.....	$ 710.00

337-44 111

Universal *vs.* Skelly
In Equity No. 785
Filed 4-11-30
and
In Equity No. 893
Filed 7-7-31
On

Egloff	—	No. 1,537,593	
Young	—	No. 1,378,307	
Dubbs	—	No. 1,484,445	
Dubbs	—	No. 1,534,927	
Pollock	—	No. 1,602,990	
Dubbs	—	No. 1,686,654	
Dubbs	—	No. 1,392,629	
Dubbs	—	No. 1,543,831	
Dubbs	—	No. 1,543,832	
Fleming	—	No. 1,764,296	$ 22,113.00

Universal *vs.* Globe (Illinois)
In Equity No. 10744
Filed 7-22-31
On

Young	—	No. 1,378,307	
Dubbs	—	No. 1,392,629	
Dubbs	—	No. 1,484,445	
Dubbs	—	No. 1,534,927	
Dubbs	—	No. 1,543,831	
Dubbs	—	No. 1,543,832	
Pollock	—	No. 1,602,990	
Fleming	—	No. 1,764,296	$ 21,418.00

Universal *vs.* National (Ohio)
In Equity No. 4018
Filed 9-30-31
On

Young	—	No. 1,378,307	
Dubbs	—	No. 1,392,629	
Dubbs	—	No. 1,484,445	
Dubbs	—	No. 1,534,927	
Egloff	—	No. 1,537,593	
Dubbs	—	No. 1,543,831	
Dubbs	—	No. 1,543,832	
Pollock	—	No. 1,602,990	
Dubbs	—	No. 1,686,654	
Fleming	—	No. 1,764,296.....	$ 14,916.00

Universal *vs.* Eldorado
In Equity No. 819-N
Filed 7-23-34
On

Dubbs	—	No. 1,392,629	
Dubbs	—	No. 1,488,325	
Egloff	—	No. 1,537,593	
Pollock	—	No. 1,658,415	
Dubbs	—	No. 1,890,974	
Angell Reissue	—	No. 18,899.....	$ 4,587.00

337-44 112

Universal *vs.* Globe (Kansas)
In Equity No. 821-N
Filed 7-25-34
On

Dubbs	—	No. 1,392,629	
Egloff	—	No. 1,537,593	
Pollock	—	No. 1,658,415	
Dubbs	—	No. 1,890,974	
Angell Reissue	—	No. 18,899.....	$ 26,857.00

Universal *vs.* Rock Island
In Equity No. 4559
Filed 8-23-34
On

Dubbs	—	No. 1,392,629	
Egloff	—	No. 1,537,593	
Pollock	—	No. 1,658,415	
Dubbs	—	No. 1,890,974	
Angell Reissue	—	No. 18,899.....	$ 5,099.00

Universal *vs.* Anderson-Prichard
In Equity No. 1645
Filed 8-23-34
On

Dubbs	—	No. 1,392,629	
Dubbs	—	No. 1,488,325	
Egloff	—	No. 1,537,593	
Dubbs	—	No. 1,890,974.....	$ 4,361.00

Universal *vs.* National (Kansas)
In Equity No. 960-N
Filed 4-1-35
and
In Equity No. 473-N
Filed 3-25-37
On

Dubbs	—	No. 1,392,629	
Egloff	—	No. 1,537,593	
Dubbs	—	No. 1,890,974	
Dubbs	—	No. 1,488,325	
Dubbs	—	No. 1,892,452.....	$172,815.00

Universal *vs.* Omar
In Equity No. 1779
Filed 8-21-35
On

Dubbs	—	No. 1,392,629	
Dubbs	—	No. 1,488,325.....	$ 564.00

113 I. A. O'SHAUGHNESSY.

Direct Examination by Mr. Von Holst.

150 I live in St. Paul, Minnesota and I am President of the following companies: The Globe Oil and Refining Company of Olkahoma, the Globe Oil and Refining Company of Delaware, the Globe Oil and Refining Company of Illinois (which is the defendant in this case), and the Globe Oil and Refining Company of Kansas. I have been President of the Globe Oil and Refining Company of Illinois since its organization about the year 1929.

Q. Did the Globe Oil & Refining Company of Illinois ever install a Winkler-Koch cracking still?

A. They did.

Q. I hand you an agreement and ask you to state
151 what that is. Look it over.

A. This is an agreement or contract by and between the Winkler-Koch Engineering Company, a Kansas corporation, and the Globe Oil & Refining Company, an Illinois corporation.

Q. Is that the construction agreement for the construction of the cracking unit at Lamont?

A. That is.

160 Mr. Von Holst: Q. Now, did you attend any meetings of the users of Winkler-Koch stills?

A. A few.

Q. Did you attend the one just referred to in Mr. Jehle's letter of February 26, 1929?

A. I did not.

Q. Which was the first meeting that you attended, if you recollect?

A. As I recall, it was in the fall of 1931, October I believe.

160 114 Q. And where?

A. At Wichita, Kansas.

Q. And do you recall who was there?

A. My best recollection is that Mr. Pritchard of the Anderson-Pritchard Company; Messrs. Herndon and German of the Skelly Oil Company; Phil Hammilton of the Root Refining Company; Mr. Heling of the Eldorado Oil & Refining Company; Dr. Winship of the Chalmette Company. I think that is all I can recall.

There may have been one or two others there, but I do not just remember.

161 Q. Will you give us the substance of what took place, what was said at that meeting so far as you remember it, and by whom the various things were brought forward?

A. As I mentioned, that was the first meeting I attended, and it seemed that the Skelly Oil Company, who were represented by Messrs. Herndon and German, opened it up with the statement that they felt that the amount that various users of the Winkler-Koch stills had been paying into this defense fund were too large, they felt that the expenses that had been entailed so far were unreasonable. A good part of the meeting was taken up, it seems by their apparent dissatisfaction, and the only way that we could find out whether or not they were in error was to appoint a committee of lawyers to make an investigation. It happened that Mr. German is an attorney for the Skelly Oil Company, and as I recall he was the only lawyer present. It was suggested that he and Mr. Kem of the White Eagle Oil Company be appointed a committee of two to make a thorough investigation as to the expenses entailed and report back to us.

162 In the meantime at the suggestion, or as it was discussed at that meeting, we thought it advisable to reduce that 2½ cent royalty to 1¼ cent, as I recall, at least temporarily until these genlemen found out whether or not the expenses were too large.

It was also suggested at that time that an executive committee be appointed, or elected, whatever you

162 115 want to call it, it was an informal meeting, for the purpose of watching and seeing that the receipts were properly disbursed and to also get in touch with some of the users who apparently had not been paying their regular contribution, and if possible to secure other users who had not already joined our defense fund.

That seemed to have been the substance of the meeting as I recall it.

Cross-Examination by Mr. Blenko.

202 Q. According to the exhibits already in evidence, Globe of Illinois has paid approximately $100,000 to date into that fund. Can you tell us how much all of your Globe companies have paid into that fund in the aggregate?

A. No, I could not.

Q. Can you approximate it?

203 A. I would say in the neighborhood of $200,000.

116 STIPULATION.

139 PX 116 is a letter written by F. L. Jehle to I. A. O'Shaughnessy on or about February 26, 1929. At the time of the writing of said letter F. L. Jehle was Vice President of Globe Oil & Refining Company (Oklahoma). Said letter reads in part as follows:

"A meeting of the refiners who have purchased Winkler & Koch Stills, was held at Wichita yesterday.

"The object of the meeting was to form an organization which could function properly in case infringement is charged by other concerns selling cracking units. The following companies, besides ourselves, were represented:

Sinclair	Chalmette
Skelly	Anderson & Pritchard
Champlin	Root
Rock Island	White Eagle
Kanotex	Eldorado

"I believe the meeting was called at the instigation of Sinclair, Skelly, and White Eagle, who seemed to be more familiar with what was going to be done than anyone else.

"The plan advanced, was that an association be formed to be known as The Winkler & Koch Patent Company. This is to be a corporation, and all the stock is to be owned by Winkler & Koch. The capital is to be one hundred thousand, and for this stock Winkler & Koch are to turn over to the company all their applications for patents. This company is to issue a license to all the owners of Winkler & Koch Stills.

139 117 "There is to be a voting trust of three trustees, one trustee chosen by Winkler & Koch, a second by

the Refiners, and a third by the first two chosen. These trustees appoint directors of the Patent Company who will operate the Patent Company. Sinclair has agreed to put $25,000 into the Patent Company at this time. For this money Sinclair has an option to purchase within three years, the patent rights of Winkler & Koch for the sum of one hundred thousand dollars. Of course the option would probably not be exercised unless the patent is granted and they are of some value. This money is to be used to defend any Refiner who is sued by any company claiming infringement. In addition to this twenty-five thousand dollars, all the companies present agreed to contribute five thousand dollars each to this defence fund, to be paid when, and as needed. I told them that the proposition looked good to me, but that it would have to be confirmed by you before I would obligate our company.

"Sinclair is also to give the services of their attorneys should any litigations develop. It was brought out at the meeting, that although Sinclair had been cracking for a number of years, and had often been accused of infringing, no one has yet sued them.

139 118 This is due, so it was stated, to the fact that Sinclair has perhaps the best staff of patent attorneys in the United States, who have made an extensive investigation into the various methods employed.

"The Winkler & Koch Patent Company will issue license agreements just as the Gasoline Products Company or others who control cracking patents.

"In the future, five thousand dollars is to be added to the cost of any stills installed, and this amount will be placed in the Patent Company for defence purposes.

"The above companies operate or have contracted for sixteen stills, making available as quickly as needed, one hundred and five thousand dollars. Of course if that amount is not needed, we will not have to pay that much. Wish you would write and let me know just what you think of the plan. It is rather complicated, and it is quite possible that I have not made it clear, but I believe it is the best way to handle a situation of this kind."

139 119 PX 120 is a letter written by W. P. Z. German on or about January 22, 1932. Said W. P. Z. German, at the time of the writing of said letter was a lawyer

in the employ of Skelly Oil Company of Tulsa, Oklahoma. Said letter reads as follows:

"Winkler-Koch Patent Company
Defense Fund

Mr. R. R. Irwin,
White Eagle Oil Corp.,
Kansas City, Mo.
Mr. L. B. Simmons,
Rock Island Ref'g Co.,
Duncan, Okla.
Mr. D. P. Hamilton,
Root Refining Co.,
Shreveport, La.
Mr. L. H. Prichard,
Anderson-Prichard
Oil Corp.,
Oklahoma City, Okla.
Mr. F. B. Fretter,
National Refining Co.,
Cleveland, Ohio.

Mr. H. H. Champlin,
Champlin Refining Co.,
Enid, Okla.
Mr. T. A. Helling,
El Dorado Refining Co.,
El Dorado, Kansas.
Mr. I. A. O'Shaughnessy,
Globe Oil & Refining Co.,
St. Paul, Minn.
Dr. W. E. Winship,
Chalmette Petroleum Corp.,
New Orleans, La.
Mr. C. C. Herndon,
Skelly Oil Co.,
Tulsa, Okla.

"Gentlemen:

Mr. Kem and I, constituting the Legal Committee, held an extensive conference with Mr. Thiess in Chicago last Tuesday, and we found the work in preparation of the defense of the several suits was proceeding actively. So far none of the cases has been assigned for trial, although the Universal has indicated that it might want to have one of the cases tried late this Spring or early this Summer at Wilmington.

"As a result of our conference with Mr. Thiess it was concluded to request each of the still users to submit inquiries which any of them may have to make as to the status of the litigation or progress made,
139 120 or as to any matter in connection therewith, to me or to Mr. Kem (James P. Kem, care of White Eagle Oil Corporation, Kansas City, Mo.), instead of to Mr. Thiess or Dr. Rittman. We will attempt to keep ourselves constantly advised as to the progress made and condition of affairs so that we may be able to answer any inquiries which may be made. Our primary reason for this suggestion is that Mr. Thiess is quite busy, and to answer inquiries takes time—and for this time we have to compensate him. Of

course, it will be entirely all right if the inquiries instead of being made to Mr. Kem and myself are made to members of the Executive Committee composed of Messrs. Prichard, O'Shaughnessy and Hamilton.

"Mr. Kem and I hope to be able to meet with Mr. Thiess about once a month. Of course, if and when any case is assigned for trial we will probably need to be much more active than that."

(Sgd.) W. P. Z. German.

122 MOTION. Filed Jan. 4 1938.

(Filed January 4, 1938.)

Comes Now The Defendant, Globe Oil & Refining Company, by its solicitors, Arthur C. Denison and Ames, Thiess, Olson & Mecklenburger, and moves this honorable Court as follows:

1. To dismiss the bill of complaint and amendments thereto on the ground that the plaintiff is before this Court with unclean hands.

2. For leave to take instanter the testimony of the following witnesses: Otto Behimer, I. J. Ringolsky, Joseph Danciger, William C. Hock, and possibly others on the issue of unclean hands.

And in support of said motion, defendant herewith presents the affidavit of J. Bernhard Thiess hereto attached.

Globe Oil & Refining Company,
Arthur C. Denison,
By Ames, Thiess, Olson & Mecklenburger.

January 3rd, 1938.

[The affidavit of J. Bernhard Thiess, referred to in the Foregoing Motion, appears immediately hereinafter.]

123 ABSTRACT OF PROCEEDINGS ON DEFENDANT'S MOTION TO DISMISS THE COMPLAINT FOR UNCLEAN HANDS.

1 124 Tuesday, January 4, 1938,

10:30 o'clock A. M.

Mr. Von Holst: May it please the Court: Certain facts have just come to the attention of the defendant which it is our duty to bring to the attention of the Court on the subject of the right of this plaintiff to its standing in Court, on the doctrine of unclean hands.

Your Honor is familiar with the rule that in Equity
2 a plaintiff must be in Court with clean hands. Judge Evans speaking for the Court of Appeals of our circuit, in Bell & Howell versus Bliss, 262 Fed. 131, said:

"The complainant, entering a court of equity, must come with clean hands. Nor is this court, as argued by counsel for appellees, limited, in applying this maxim, to a case where the iniquitous action is one of which the moving party may personally complain. The rule thus invoked need not be pleaded at all. In fact, it is not a matter of defense primarily. Courts apply it, not to favor a defendant, but because of the interest of the public; courts act *sponte sua*."

2 125 The grounds of the motion are set forth in the affidavit of Mr. J. Bernhard Thiess, which is short and which sets forth the facts upon which the motion is based.

"J. BERNHARD THIESS, being first fully sworn, on oath, deposes and says:

3 "I am chief counsel for defendant, Globe Oil & Refining Company, in the above entitled cause.

"On December 17, 1937, I J. Ringolsky and William G. Boatright, of the firm of Ringolsky, Boatright & Jacobs, of Kansas City, Missouri, lawyers known to me to be attorneys for Danciger Oil & Refineries, Inc., of Fort Worth, Texas, came into my office at 77 West Washington Street, Chicago, Illinois, and requested a conference."

That was on December 17th of this last year.

"During said conference Mr. Rongolsky disclosed to me in substance that on or about February 24, 1937,

he, Ringolosky, together with Joseph Danciger, held a meeting in the offices of the Universal Oil Products Company, in New York City, with Hiram J. Halle, president of said company, and W. M. Behrens, attorney for Halle and secretary of and attorney for Universal Oil Products Company; that during the course of said conference Mr. Ringolsky asked Mr. Halle for information concerning a certain patent attorney in Kansas City by the name of Scofield; that the
4 126 reason for requesting this information was that Ringolsky and Boatright had retained Scofield as patent attorney in a patent suit for a company in which they were interested in Kansas City; that Halle then said he knew Scofield but did not think well of him because Scofield had at one time been assistant to a Mr. Belknap, patent attorney for Universal and that he had been hired away from Universal by Mr. R. J. Dearborn, attorney for Gasoline Products Company, Inc. and The Texas Company, and that Scofield possessed valuable records and knew many secrets of Universal Oil Products Company; that without further remarks on the part of any one present the said Halle went on to say in substance that Dearborn stole Scofield from Universal but that he, Halle, stole Otto Behimer from Dearborn and that if Mr. Dearborn thinks that he is ever going to be able to take Behimer's deposition or cross examine him in any connection he is badly mistaken.

"Ringolsky also disclosed to me at said conference at my office on December 17, 1937, that on a subse-
5 quent occasion, to-wit, on or about March 18, 1937, at Fort Worth, Texas, in the private office of Mr. William C. Hock, attorney for Danciger Oil & Refineries, Inc., he, Ringolsky, had a conference with said Behrens at which said William C. Hock was present, and that at said conference Ringolsky related to Hock in the presence of Behrens the substance of Halle's statement aforesaid as to said Otto Behimer, as well as cer-
5 127 tain statements made by R. J. Dearborn hereinafter referred to; that Behrens did not deny the conversation or that the said Halle had made such statements, but stated that Halle would not deny them and that the facts would undoubtedly require a dismissal of the suit against the Danciger Oil & Refineries, Inc., on the Dubbs patent.

"Ringolsky also disclosed at said conference in my

office on December 17, 1937, that on a subsequent occasion, to-wit, on or about April 24, 1937, said Behrens called at the home of Ringolsky in Kansas City, Missouri, and reference was again made to what Halle had said concerning Behimer, and Behrens in substance stated that while that was true, still Uni-
6 versal had eighteen other patents that Danciger Oil & Refinaries, Inc., were infringing.

At the aforesaid conference on December 17, 1937 at my office in Chicago, the said Ringolsky also disclosed to me that he and William G. Boatright, had prior to said conference with Halle and Behrens in New York City on February 24, 1937, had a conference with R. J. Dearborn, attorney for Gasoline Products Company, Inc. and The Texas Company; that in said conference said Dearborn had stated in substance to them that The Texas Company which is a part of the Gasoline group owns the Behimer patent; that Otto Behimer was formerly for years an employe of the Gasoline group and that they had all of the records, including certain sworn statements signed by Behimer; that Universal stole Behimer away from the Gas-
6 128 oline group; that Universal employees and representatives had stolen valuable records and attempted to steal valuable records from the Gasoline group; that he did not charge Halle with having been connected with any of the stealing or attempted steal-
7 ing of records; that the records, signed and sworn to by Behimer showed conclusively that Behimer was first and ahead of Dubbs on clean circulation not only in the filing of an application for patent but in the reduction to practice, and also stated in connection with the statement that Universal had stolen Behimer that there had been paid to Behimer $100,000 in cash with an agreement to pay him $5,000 a year for life.

"The said Otto Behimer referred to in the disclosures made to me by Ringolsky on December 17, 1937, is the patentee of Behimer patents Nos. 1,840,012, 1,883,850, and 2,027,014 set up in the answer to the bill of complaint herein as showing prior invention in the said Behimer over the Dubbs patent in suit. The application, Serial No. 263,562, upon which all said Behimer patents are based, was filed on November 21, 1918, and a divisional application thereof, No. 630,242, was in interference in the United States Patent Office with Dubbs patent No. 1,392,629 in suit in the case at

bar. Said interference was instituted on June 8, 1923, and was entitled Dubbs v. Holmes, Manley & Behimer,
8 Interference No. 49,355. No proofs or testimony were taken to establish the dates of either Dubbs or Behimer, but pursuant to a settlement or other arrangement between Universal Oil Products Company,
8 129 plaintiff herein, and assignee of the Dubbs patent No. 1,392,629 and The Texas Company, assignee of the Behimer application involved in said interference, said interference was disposed of and terminated without an award of priority of invention upon the merits or upon proofs and testimony, but by the filing of a disclaimer by Behimer of the invention of the Dubbs claims, which disclaimer was signed by Otto Behimer and assented to by The Texas Company as assignee. Thus, the claims forming the issues of said interference remained in said Dubbs patent No. 1,392,629, uncontested and unchallenged as to priority by Behimer, and are the claims now being asserted against the Globe Oil & Refining Company in the present action.

"If defendant's present motion to take testimony *instanter* be granted, defendant expects to prove by the testimony of the witness Otto Behimer that during the pendency of said interference and while the Dubbs
9 claims of the Dubbs' 629 patent now in suit in the case at bar were in interference with the claims of the application of said Otto Behimer on the sole issue of priority of invention, he, the said Behimer, was regarded by Universal Oil Products Company as a key witness on said issue, having direct and personal knowledge of the facts relating thereto, and that, and because thereof, the Universal Oil Products Company, owner of the Dubbs patent and one of the parties in interest in the suit, nevertheless hired Behimer away from the employ of The Texas Company and paid him substantial sums of money, and that the purpose of said hiring and said payments was to suppress
9 130 Behimer's testimony as to prior invention over Dubbs and to make the said Behimer unavailable as a witness to The Texas Company and the Gasoline Products, Inc. and to any other litigant who might thereafter desire to rely upon prior invention by Behimer as invalidating the said Dubbs patent.

"If defendant's motion be granted, defendant ex-

pects to prove by the testimony of said Ringolsky, Joseph Danciger, and William C. Hock that the plaintiff's motive in hiring said Behimer and paying him said sums as aforesaid was for the purpose of suppressing material evidence and making Behimer, who was regarded by plaintiff as a key witness, unavailable, adverse, or unwilling, in any proceeding or suit in which the Dubbs patent might be in issue.

"Although I had heard that the said Otto Behimer had been in the employ of the Universal Oil Products Company and that he had formerly been in the employ of The Texas Company, neither myself nor any other attorney, for the Globe Oil & Refining Company had ever, prior to the conference at my office on December 17, 1937, wherein the said Ringolsky made his disclosures to me as aforesaid, had any knowledge as to the sums paid to said Behimer and as to the reason for which these sums were paid, and as to the reasons for Behimer's employment by Universal Oil Products Company; that since the disclosures to me by Ringolsky on December 17, 1937, as aforesaid, I have not prior to this time presented defendant's motion for the reason that I fully believed that if the motion 131 were presented before the said Otto Behimer was served with subpoena to testify in this cause, it would be impossible to secure his attendance as a witness to testify to the facts aforesaid, and that said Behimer has been served at the earliest possible moment with subpoena to appear and testify in this cause.

"J. Bernhard Thiess."

The said witness was duly served with a subpoena to appear before this Court this morning on Saturday, and is now here before this Court.

So that what the affidavit discloses is that during this proceeding, and at a time when the Universal Oil Products Company well knew that Otto Behimer in the employ of The Texas Company was contending that he, Otto Behimer, was the prior inventor of the invention of the Dubbs' 629 patent, now in suit, and regarding which is the equity which the plaintiff is now asserting against this defendant, with that knowledge the plaintiff for a corrupt purpose hired Behimer away and paid substantial sums of money to him; that the

purpose and motive of those actions was to suppress testimony and suppress evidence.

25 132 As I have stated, the witness Otto Behimer is now in court, he will be in obedience to subpoena served him on Saturday.

We ask this Court to immediately take his testimony and then to appoint a day in the near future, this week, preferably Thursday or Friday, for the taking of the remaining witnesses Ringolsky, Hock and Danciger, in order that before anything further is done in this case on this question of the plaintiff's standing, the plaintiff's position in this court *in limine* be determined, because under the doctrine of the Keystone-Driller case, if these facts be found against the plaintiff, if these facts be established, the bill must be dismissed.

43 Mr. Reichmann: Now the answer. Again I say in commenting upon this affidavit, clearly the testimony of Ringolsky, Danciger and Hock could not establish the fact that plaintiff's motive in hiring Behimer was for the purpose of suppressing material evidence, and rendering him unavailable, adverse or unwilling in any proceeding or suit in which the Dubbs patent might be in issue, because, clearly, their testimony would be predicated upon hearsay pure and simple.

What do they know about it, your Honor? These men don't know anything about what the facts were according to this affidavit; excepting what they say Halle told them.

The Court: I don't think I will proceed today on this affidavit. I do think that there should be an amendment to the answer. I don't see any reason why it shouldn't be.

Mr. Von Holst: Because the Court of Appeals of this Circuit said it does not have to be pleaded.

43 133 The Court: It does not have to be, but I think
44 that is the proper method and practice.

Mr. Reichmann: Yes.

The Court: I could proceed, perhaps, without it.

Mr. Von Holst: You should proceed without it, your Honor.

The Court: No.

Mr. Von Holst: If I may be heard, I will show you why. If we had amended our answer would Behimer be here in court this morning.

Mr. Reichmann: Yes, he would.

The Court: I am not saying whether he would or would not, but he is here, and I can continue this matter for a week or ten days or two weeks, or whatever time is necessary to give you the opportunity to amend your answer and raise the issue on the pleadings, then I will determine whether I will hear the matter myself or whether I will refer it to a Master. But
45 while admitting all you say, that Behimer would not be here, he is here now and I can retain jurisdiction. I will continue this matter and give you an opportunity to amend your answer and raise the issue in the regular way and I will have a hearing.

Mr. Von Holst: What facts do we need to plead? They have to defend their conduct.

The Court: I won't decide this matter on a motion. I am going to decide it on the pleadings, the proper pleadings, where they will have an opportunity to
45 134 answer the pleading. And there is something in their contention, perhaps, that they didn't have an opportunity, and there is something in their contention that these are hearsay statements.

Mr. Von Holst: Your Honor, if we had come into you on December 18th, the day after, and spoken to you in chambers—

The Court: That is true.

Mr. Von Holst: It is the Court's duty to inquire.

The Court: That is true, but you had the party here and you might have had—you might have secured the affidavits of these people. I don't know why you couldn't.

Mr. Von Holst: But we are offering the witnesses.
46 We will have the witness here within 48 hours.

The Court: You will have the opportunity of having the witnesses, but really where the rights of the parties can be preserved it is better to have a hearing upon specific pleadings and answer than upon a mere motion.

Mr. Von Holst: There was no pleading in the Keystone Driller case.

The Court: I don't care whether—

Mr. Reichmann: It was discovered on the trial, your Honor.

The Court: Just a minute—I don't care—

Mr. Von Holst: This was discovered on the trial.

The Court: I don't—

Mr. Von Holst: It need not be pleaded at all.

The Court: I will give you the opportunity to have this heard upon pleadings, and that is the way I
46 135 propose to have it heard.

Mr. Von Holst: I say, your Honor, that it should not be pleaded because it is not a defense.

The Court: I am continuing this matter for two weeks. If you wish to amend your answer by setting up this defense you may do so.

47 Mr. Von Holst: We have to.

Mr. Brand: May we have an order of *ne exeat?*

Mr. Thiess: May I ask your Honor a question?

The Court: It is a serious charge, and if it is true, why of course the bill should be dismissed. I am not prejudging your case. I am just telling you the way I prefer to hear this, and that your witness—the jurisdiction over your witness is retained. He will be here, and we will hear it in a more orderly sort of fashion than we could on an affidavit, heresay affidavit.

Mr. Thiess: Let me ask this, your Honor—

The Court: Yes.

Mr. Thiess: We don't want this to deteriorate into a contest on affidavits. If we plead according—plead this matter, as you have request—

The Court: Yes,

Mr. Thiess: And they answer that pleading—

The Court: Yes.

Mr. Thiess: —then we request your Honor set this down for hearing so that these witnesses can be heard and the truth of this matter established.

The Court: I will set it down for hearing.

Mr. Reichmann: I supplement that. I would like
48 136 it heard before your Honor too s that you may see these witnesses, both sides.

The Court: I may do so and I am rather inclined to do that. My calendar is pretty well taken up with the Utility Power & Light; they are bothering me pretty near every day, and some new question comes up, but I think I would like to hear this myself. I prefer to hear it in a more orderly sort of fashion.

Mr. Brand: If your Honor please, I have been informed, and will so testify, that Mr. Behimer was intending to leave the city. May we have an order of ne exeat so we may be sure he will be here?

Mr. Reichmann: You don't need that.

The Court: Mr. Behimer is a man who can be reached.

Mr. Reichmann: There he is, your Honor (indicating).

The Court: The process of this court extends throughout the United States.

Mr. Reichmann: Yes, your Honor.

The Court: If he is not here he is guilty of contempt of this court.

Mr. Brand: That is all we want.

The Court: And I think we can reach him and bring him back.

Mr. Reichmann: He will be here, your Honor, be-
49 cause he is not the kind of man—

Mr. Von Holst: Let us fix the date.

* * * * *

50 138 The Court: You may file your amendment by —your answer by Thursday and they will have leave to reply.

Mr. Neuman: There is no reply.

Mr. Reichmann: We may have to amend.

The Court: For cause shown a reply may be allowed, and if the party desires I might allow a reply.

Mr. Reichmann: Yes, your Honor.

Mr. Thiess: Then when would you set this for hearing?

The Court: Two weeks from today.

Filed Jan. 5, 1938. 139 AMENDMENT TO DEFENDANT'S ANSWER.

(Filed January 5, 1938.)

140 Defendant amends its answer herein by inserting as paragraph L, immediately after paragraph XLIX of the original printed answer, the following:

L. This defendant further answering the bill of complaint and the amendments thereto, avers that the plaintiff comes before this Honorable Court with unclean hands, and therefore, is not entitled to any standing in this court or to the relief, or any part thereof, as prayed and demanded in its bill of complaint and the amendments thereto, in that plaintiff has been and is now guilty of wilful and reprehensible, inequitable and unconscionable conduct in respect of Letters Patent No. 1,392,629, issued to Carbon P. Dubbs on October 4, 1921, here in suit, and that said conduct directly and materially relates to this cause of action, in this that:

(a) On or about, to-wit, June 8, 1923, said Dubbs patent No. 1,392,629 was declared, by the United States Patent Office, to be in interference, within the meaning and purview of Section 4904 U. S. Revised Statutes (35 U. S. C. A. § 52) with an application filed on or about, to-wit,
141 April 6, 1923, in the joint names of Ralph C. Holmes, Frederick T. Manley, and Otto Behimer, and which bore Serial No. 630,242, said interference being entitled "Dubbs *vs.* Holmes, Manley & Behimer, Interference No. 49,355."

(b) The said Holmes, Manley and Behimer application was subsequently, on or about, to-wit, June 10, 1927, converted into the sole application of Otto Behimer who was, on information and belief, at the time of the filing of said application, at the time of declaration of said interference, and until, to-wit, August, 1927, in the employ of The Texas Company at Port Arthur, Texas, which company was the assignee and owner of the said application. On information and belief, Otto Behimer had been in the employ of the said The Texas Company continuously since the year 1915 as a research and experimental engineer, receiving modest and reasonable compensation and salary as such.

(c) The purpose of the aforesaid interference was to determine, under the aforesaid Patent Statute, who, as between Carbon P. Dubbs on the one hand, and Otto Behimer on the other, was the first, true and lawful inventor of the process purported to be defined and set forth in all of the claims of Dubbs' patent except that numbered 6.

(d) From and after the declaration of said interference and particularly after having been apprised, by the preliminary statement filed on behalf of said Otto Behimer by his assignee, The Texas Company, that the claimed dates of prior invention of said Behimer were prior in point of time to those claimed on behalf of Carbon P.
142 Dubbs and more particularly from and after the refusal of the United States Patent Office (1) to dissolve the said interference or (2) hold that the disclosure of the said Behimer application was inoperative or (3) hold that the said Behimer was not entitled to contest with the said Dubbs the question of priority of invention of all of the claims of the said Dubbs patent No. 1,392,629 except that numbered 6, plaintiff, on information and belief, became and was uneasy as to the probabilities as to its success in the said interference and became and was well aware

of the fact that should said interference be determined adversely to Carbon P. Dubbs, the said Dubbs patent No. 1,392,629, except as to claim 6 thereof, would be null and void and of no force and effect whatsoever under the Patent Statutes in such cases made and provided.

(e) Prior to, to-wit, August, 1927, plaintiff, on information and belief, well knew that the said Otto Behimer was a material and important witness on behalf of the said The Texas Company in the interference entitled "Dubbs *vs.* Holmes, Manley & Behimer Intereference, No. 49,355", or on behalf of any member of the general public who, when charged with alleged infringement of the Dubbs patent No. 1,392,629, might wish to question the validity thereof; plaintiff, on information and belief, well knew also that the details and circumstances relating to the contention that Otto Behimer was in fact prior to Carbon P. Dubbs in the discovery and perfection of the process set forth and defined in the claims of the said Dubbs patent No.
143 1,392,629 except that numbered 6, were in fact better known to, and more peculiarly within the knowledge of, Otto Behimer than any other living person; plaintiff, on information and belief, also was fully aware that without the said Otto Behimer the said The Texas Company's case in said interference would be greatly impaired, and, moreover, that should said Otto Behimer become an adverse or unwilling witness for The Texas Company in said interference, the probabilities of success on the part of Carbon P. Dubbs would be greatly increased; and that any member of the general public desirous of contesting the validity of said Dubbs patent No. 1,392,629 would be at a serious and great disadvantage by virtue of the unavailability or adversity and unwillingness of the said Otto Behimer as a witness.

(f) Defendant avers that for the purpose of suppressing so much of the important and material details and circumstances pertaining to the priority of Otto Behimer in the said interference entitled "Dubbs *vs.* Holmes, Manley & Behimer, Interference No. 49,355", as was peculiar to, or within the knowledge of, the said Otto Behimer, and for the further purpose of rendering the said Otto Behimer unavailable as a voluntary and favorable witness in said controversy or in any other involving the issue of priority of invention as between Otto Behimer and Carbon P. Dubbs, or to make him an adverse and unwilling witness

for the said The Texas Company or any member of
144 the general public desirous of procuring his testimony,
plaintiff, in or about, to-wit, the month of August, 1927, offered to and paid a large sum of money, to-wit, $100,000 to the said Otto Behimer and thereby induced and peresuaded him to leave the employ of the said The Texas Company and induced him also to enter the employ of plaintiff under a long term employment contract by the terms of which the said Otto Behimer was to receive annual salary and compensation from plaintiff greater than that formerly recieved by him from The Texas Company and a pension, to-wit, of $5000.00 a year for the remainder of his life, and that, on information and belief, plaintiff, at or about the same time, to-wit, in June, 1927, did purloin or attempt to purloin documents and records in the possession of said The Texas Company pertaining and relating to the said question of prior invention by Behimer over Dubbs.

(g) That as a result of the aforesaid inducements, and particularly said large payment of money and the said prospective salaries and pension, the said Otto Behimer left the employ of The Texas Company and immediately, in or about the month of August, 1927, entered that of plaintiff and, on information and belief, thereafter supplied plaintiff with statements or affidavits as to the details and circumstances relating to the issue of priority as between himself and Carbon P. Dubbs and otherwise there-
by rendered himself unavailable as a willing and fa-
145 vorable witness for The Texas Company in the interference then pending in the United States Patent Office, and, also, the said Otto Behimer then and there became, and has remained to the present time, an adverse and unwilling witness for any member of the public which might desire to obtain his testimony and question the validity of Dubbs patent No. 1,392,629 upon the defense that the said Carbon P. Dubbs was not the first and true inventor thereof.

(h) Although Otto Behimer was in fact prior to Carbon P. Dubbs in the invention and discovery of the process defined in the claims of Dubbs patent No. 1,392,629, plaintiff thus secured an unfair advantage over the said The Texas Company by virtue of hiring away its chief, important, and material witness, to-wit, the said Otto Behimer, and, on information and belief, in consequence thereof and by virtue of the fact that plaintiff was holding before the said Otto Behimer rewards for his silence, and the fact

that although The Texas Company should nevertheless proceed with its available proofs on the said issue of priority, the said Otto Behimer would be an adverse or unwilling witness, the said The Texas Company settled and terminated the said interference entitled "Dubbs *vs.* Holmes, Manley and Behimer, No. 49,355" and filed therein a disclaimer on the part of the said Otto Behimer of the subject-matter of the claims of Dubbs patent No. 1,392,629. The aforesaid disclaimer was executed by Otto

146 Behimer on October 26, 1931, and filed in the United States Patent Office on December 2, 1931. An award of priority of invention to Carbon P. Dubbs was made in said interference on December 5, 1931, without the taking of any proofs or testimony whatsoever.

(i) Otto Behimer is an important and material witness as respects the issue of priority as between himself and Carbon P. Dubbs and has remained under contract with plaintiff from the year 1927 to the present time and, on information and belief, has been under the control, direction, and surveillance of the officials and agents of plaintiff who have made every possible effort to render the said Otto Behimer non-communicative and unavailable for an interview regarding the details and circumstances as to his priority over Carbon P. Dubbs, and the effect of such conduct of plaintiff and its officials was and is that of suppressing the said Behimer's testimony, or if the facts as to his priority over Dubbs be developed and produced in court to make him an adverse and unwilling witness; and, on information and belief, said iniquities and reprehensible conduct has been admitted by Hiram J. Halle, President of plaintiff, who stated on or about, to-wit, February 23, 1937, after he had knowledge of the fact that R. J. Dearborn, attorney for The Texas Company, was cooperating in the presentation of the said defense, that the said Dubbs patent was invalid in view of Behimer,

147 that he stole Otto Behimer from The Texas Company, that he has caused the said Otto Behimer to be unavailable as a willing and favorable witness on said issue of priority, and that the said R. J. Dearborn would never be enabled to examine, cross-examine, or otherwise secure the testimony of Otto Behimer on the question of his priority over Carbon P. Dubbs.

The foregoing unconscionable acts and doings of the plaintiff had, and have, immediate and necessary relation to the equity that plaintiff seeks in respect of the relief

prayed in its bill of complaint and amendments thereto, and constitute unclean hands depriving plaintiff of any standing in this Court and barring plaintiff from any equitable relief in this cause.

Globe Oil and Refining Company,
By Ames, Thiess, Olson and
Mecklenburger,
Its Solicitors.

149 PETITION FOR SUBPOENA DUCES TECUM TO OTTO BEHIMER. Filed Jan 5, 1938.

(Filed January 5, 1938.)

To the Honorable William H. Holly, Judge of the United States District Court for the Northern District of Illinois, Eastern Division.

Petitioner, J. Bernhard Thiess, respectfully shows to this Court:

1. I am the attorney for the defendant in the above-entitled cause.

2. The above-entitled action is brought by plaintiff against defendant for alleged infringement of United States Letters Patent No. 1,392,629, issued October 4, 1921, to Carbon P. Dubbs, and No. 1,537,593, issued May 12, 1925, to Gustave Egloff.

3. The books and papers hereinafter mentioned are material and necessary evidence in said cause, for the following reasons:

The said books and papers, in conjunction with the testimony of Otto Behimer, I. J. Ringolsky, Joseph Danciger, and William C. Hock, will show that, while the said Dubbs patent was pending in Interference No. 49,355 in the United States Patent Office with an application of the
150 said Otto Behimer, and while the Dubbs claims now being asserted in the case at bar against this defendant were in interference and subject to being held invalid because of priority by Otto Behimer, Otto Behimer, being regarded by Universal Oil Products Company, the plaintiff herein, as a key witness in the said interference on the issue of priority of invention and having direct and personal knowledge of the facts relating thereto, was hired away from the employ of The Texas Company, assignee

and owner of the Behimer application, by Universal Oil Products Company, plaintiff herein, in August, 1927, and was paid substantial sums of money, and that the purpose of said hiring and said payments was to suppress Behimer's testimony as to prior invention over Dubbs and to make the said Behimer unavailable as a witness to the said The Texas Company and to any other litigant who might thereafter desire to rely upon prior invention by Behimer as invalidating the said Dubbs patent. The result of the aforesaid hiring away and payment of large and substantial sums of money to Behimer was the termination of the interference without an adjudication upon the merits and without testimony or proofs, whereby the claims of the Dubbs patent now being asserted against this defendant herein remained therein unchallenged or uncontested in so far as priority by Behimer was concerned, all of which, in the opinion of the petitioner, materially and directly bears upon the standing of plaintiff, Universal Oil Products Company, in this Court and its right to seek any equity based upon the said Dubbs patent.

4. Said books and papers are, as he is informed and verily believes, now in the possession of Otto Behimer, 321 North East Avenue, Oak Park, Illinois. Petitioner does not have copies of these books and papers and 151 therefore is unable to particularize or better identify the same except than as hereinafter set forth.

Wherefore, petitioner prays that this Court order the Clerk of this Court to issue a subpoena duces tecum in the above-entitled cause to be addressed to Otto Behimer, 321 North East Avenue, Oak Park, Illinois, and requiring him to produce on the 18th day of January, 1938, before this Court, the following described papers and books, to-wit:

A. All correspondence and telegrams between Otto Behimer and Universal Oil Products Company, contracts, and documents of every nature—or copies thereof, if the originals are not in his possession—referring or pertaining in any way to the employment or retention by Universal Oil Products Company of Otto Behimer prior to or at the time when he entered the employ of or was retained by Universal Oil Products Company in, to-wit, August, 1927, or relative to services, compensation, bonus, gift, pension, cancellation of indebtedness or obligations, or present or future compensation of any nature in favor

of or for the said Otto Behimer, Mrs. Otto Behimer, or Mrs. Anna Shackelton, or any appointee of Otto Behimer.

B. Bank deposit books of Otto Behimer and Mrs. Otto Behimer for the period of Otto Behimer's employment by Universal Oil Products Company and for a period of three months prior thereto.

C. Personal books of account of Otto Behimer or Mrs. Otto Behimer showing sums of money received from Universal Oil Products Company from the year 1927 down to the present time.

D. Copies of income tax returns filed by Otto Behimer and Mrs. Otto Behimer, or joint returns of both, during the time of Otto Behimer's employment by Universal Oil Products Company.

152 E. Correspondence, statements, or other documents in Otto Behimer's possession during the term of his employment by Universal Oil Products Company relating to the subject of priority of invention as between Otto Behimer and Carbon P. Dubbs, or to the subject of Dubbs *vs.* Behimer Interference No. 49,355, or to the filing of a disclaimer of Otto Behimer in said interference.

F. Letters from Richard J. Dearborn or The Texas Company—or copies thereof, if the originals are not in his possession—written to Otto Behimer in connection with Interference No. 55,610, Carbon P. Dubbs *vs.* Otto Behimer, in connection with a request by said Dearborn or by said The Texas Company to Otto Behimer in an effort to secure the execution by said Otto Behimer of an amended preliminary statement in said interference, one of said letters being dated December 14, 1927.

J. Bernhard Thiess,
Petitioner and Attorney for Globe Oil and Refining Company.

State of Illinois }
County of Cook } ss.

J. Bernhard Thiess, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the contents thereof and the statements made are true to the best of his knowledge, information and belief.

J. Bernhard Thiess.

Subscribed and Sworn to before me this 5th day of January, 1938.

Anne E. Ryan,
Notary Public.

(Seal)

My commission expires May 10, 1939.

153 PETITION FOR SUBPOENA DUCES TECUM TO PLAINTIFF.

(Filed Jan. 17, 1938.)

To the Honorable William H. Holly, Judge of the United States District Court for the Northern District of Illinois, Eastern Division:

Petitioner, J. Bernhard Thiess, respectfully shows to this Court:

1. I am the attorney for the defendant in the above-entitled cause.

2. The above-entitled action is brought by plaintiff against defendant for alleged infringement of United States Letters Patent No. 1,392,629, issued October 4, 1921, to Carbon P. Dubbs, and No. 1,537,593, issued May 12, 1925, to Gustave Egloff.

3. The books and papers hereinafter mentioned are material and necessary evidence in said cause for the following reasons:

The said books and papers, in conjunction with the testimony of Otto Behimer, I. J. Ringolsky, Joseph Danciger, and William C. Hock, will show that while the said Dubbs patent was pending in Interference No. 49,355 in the United States Patent Office with an application of the said Otto Behimer, and while the Dubbs claims now
154 being asserted in the case at bar against this defendant were in interference and subject to being held invalid because of priority by Otto Behimer, Otto Behimer, being

regarded by Universal Oil Products Company, the plaintiff herein, as a key witness in the said interference on the issue of priority of invention and having direct and personal knowledge of the facts relating thereto, was hired away from the employ of The Texas Company, assignee and owner of the Behimer application, by Universal Oil Products Company, plaintiff herein, in August, 1927, and was paid substantial sums of money, and that the purpose of said hiring and said payments wae to suppress Behimer's testimony as to prior invention over Dubbs and to make the said Behimer unavailable as a witness to the said The Texas Company and to any other litigant who might thereafter desire to rely upon prior invention by Behimer as invalidating the said Dubbs patent. The result of the aforesaid hiring away and payment of large and substantial sums of money to Behimer was the termination of the interference without an adjudication upon the merits and without testimony of proofs, whereby the claims of the Dubbs patent now being asserted against this defendant herein remained therein unchallenged or uncontested in so far as priority by Behimer was concerned, all of which, in the opinion of the petitioner, materially and directly bears upon the standing of plaintiff, Universal Oil Products Company, in this court and its right to seek any equity based upon the said Dubbs patent.

4. Said books and papers are, as he is informed and verily believes, now in the possession of plaintiff, Universal Oil Products Company. Petitioner does not have copies of these books and papers and is unable to better particularize or identify the same than as hereinafter set forth.

Wherefore, petitioner prays that this court order the clerk of this court to issue a subpoena duces tecum in the above-entitled cause to be addressed to the Universal
155 Oil Products Company and requiring it to produce on the 18th day of January, 1938, before this Court, the following described papers and books, to-wit:

A. All memoranda (whether official or personal), reports, correspondence and telegrams—or copies thereof, if the originals are not in its possession—referring or pertaining in any way to the employment or retention by Universal Oil Products Company of Otto Behimer prior to or at the time when he entered the employ of or was retained by the Universal Oil Products Company, to-wit, in August, 1927.

B. All contracts, agreements, documents, and all supplements thereof—or copies thereof, if the originals are not in its possession—made and entered into by and between Universal Oil Products Company and Otto Behimer relative to employment, services, compensation, bonus, or pension of or for the said Otto Behimer, or Mrs. Otto Behimer, or Mrs. Anna Shackelton, or any appointee of Otto Behimer.

C. All records, data, books of account, ledgers, journals, books of entry, canceled checks or vouchers—or copies thereof, if the originals are not in its possession—showing payments to or for the account of Otto Behimer, or Mrs. Otto Behimer, or Mrs. Anna Shackelton, or any appointee of Otto Behimer, either as salary, fees, gift, pension, cancellation of indebtedness or obligations, or present or future compensation of any nature made by Universal Oil Products Company from January, 1927, to the present time.

D. All statements, affidavits or other writings (whether sworn or not)—or copies thereof, if the originals are not in its possession—referring to or pertaining to the invention and discovery of a process like, or substantially like,
that shown and described in patent No. 1,883,850, issued
156 October 18, 1932, to Otto Behimer, or to the subject
matter of Interference No. 49,355, entitled "Dubbs v. Holmes, Manley & Behimer," which have been prepared, executed or signed since August, 1927, by the said Behimer and delivered to or for the account of Universal Oil Products Company.

E. All correspondence, telegrams, memoranda (whether official or personal), documents and writings—or copies thereof, if the originals are not in its possession—which pertain in any way to the disclaimer of Otto Behimer, dated October 26, 1931, and filed in the Interference entitled "Dubbs v. Holmes, Manley & Behimer, No. 49,355," which passed between the said Otto Behimer and the Universal Oil Products Company, prior to or at the time of the execution of said disclaimer.

F. All memoranda (whether official or personal), reports, correspondence, telegrams—or copies thereof, if the originals are not in its possession—written or exchanged by and between Otto Behimer on the one hand and the Universal Oil Products Company, or its agents or attorneys, on the other hand, or The Texas Company, or its agents or attorneys, on the one hand and Universal Oil

Products Company, or its agents or attorneys on the other hand, pertaining to or referring in any way to the subject of inventorship of Otto Behimer or the issue of priority of invention as between Otto Behimer and Carbon P. Dubbs.

G. Letters from Richard J. Dearborn or The Texas Company—or copies thereof, if the originals are not in its possession—written to Otto Behimer in connection with Interference No. 55,610, Carbon P. Dubbs v. Otto Behimer, in connection with a request by said Dearborn or by said The Texas Company to Otto Behimer in an effort to secure the execution by said Otto Behimer of an amended
157 preliminary statement in said interference, one of said letters being datel December 14, 1927.

J. Bernhard Thiess,
Petitioner and Attorney for Globe Oil and Refining Company.

State of Illinois, } ss.
County of Cook. }

J. Bernhard Thiess, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the contents thereof and the statements made are true to the best of his knowledge, information and belief.

J. Bernhard Thiess.

Subscribed and Sworn to before me this 5th day of January, 1938.

Anne E. Ryan.

(Seal)

My commission expires May 10, 1939.

158 STIPULATION.

On January 5, 1938 an order to issue subpoena duces tecum to Otto Behimer as prayed in the aforesaid petition was issued, the subpoena issued thereon on the same day and was duly served and the said Otto Behimer appeared in response thereto.

Hearing on defendant's motion for subpoena duces tecum to the plaintiff was had on January 12, 1938, and the motion was denied upon assurance of plaintiff's counsel that a search would be made for the designated documents, and

that the same would be produced upon the hearing of the issue of unclean hands subject to questions of materiality and relevancy.

Filed Jan. 14, 1938.

159 INTERROGATORIES PROPOUNDED TO PLAINTIFF.

(Filed January 14, 1938.)

Now Comes The Defendant, Globe Oil & Refining Company, by its solicitors, Ames, Thiess, Olson & Mecklenburger, and having first secured leave of Court propounds the following interrogatories under Equity Rule 58, the same to be answered under oath separately and fully by plaintiff, Universal Oil Products Company, by its President, Hiram J. Halle, or by such other official or officer of the plaintiff company having knowledge of the facts:

1. Did the Universal Oil Products Company, a South Dakota corporation, and predecessor of plaintiff herein, ever have in its employ one Otto Behimer?

2. If the answer to Interrogatory No. 1 is in the affirmative, when did such employment begin?

3. If the answer to Interrogatory No. 1 is in the affirmative, is said Otto Behimer still in the employ, either of Universal Oil Products Company of South Dakota or of Universal Oil Products Company of Delaware?

4. If the answer to Interrogatory No. 1 is in the affirmative and the answer to Interrogatory No. 3 is in the negative, when did such employment cease?

160 5. If the answer to Interrogatory No. 1 is in the affirmative, was the contract of employment in writing?

6. If the answer to Interrogatory No. 1 is in the affirmative, at what salary was the said Otto Behimer employed, and how much salary in all has he been paid during the term of his employment?

7. If the answer to Interrogatory No. 1 is in the affirmative, did Universal Oil Products Company of South Dakota, plaintiff's predecessor, or Universal Oil Products Company of Delaware, plaintiff herein, or the agents or attorneys for either of them, in addition to Otto Behimer's salary, pay, deliver, transfer or convey to Otto Behimer, Mrs. Otto Behimer, Mrs. Anna Shackleton, or any appointee of Otto Behimer:

(a) any sum or sums of money
(b) any securities
(c) any real estate or interest therein

(d) any personal property

or did Universal Oil Products Company of South Dakota and/or the Universal Oil Products Company of Delaware, its agents, or attorneys, cancel or arrange for the cancellation of any indebtedness of the said Otto Behimer, Mrs. Otto Behimer or Mrs. Anna Shackleton or of any appointee of any of them?

8. If the answer to Interrogatory No. 7 is in the affirmative, as to any subdivision thereof, state the amounts of such sum or sums or identify and describe such securities, real estate or interest therein, personal property, or cancellation of indebtedness.

9. If the answer to Interrogatory No. 1 is in the affirmative, did the Univesal Oil Products Company of South Dakota know that at the time that it employed Otto
161 Behimer there was pending in the United States Patent Office Interference No. 49,355, entitled Holmes, Manley & Behimer v. Dubbs?

10. If the answer to Interrogatory No. 1 is in the affirmative, did Universal Oil Products Company of South Dakota at the time that it employed said Otto Behimer know that the application of Holmes, Manley & Behimer had been converted into the sole application of Otto Behimer on or about June 10, 1927?

11. If the answer to Interrogatory No. 1 is in the affirmative, did the Universal Oil Products Company of South Dakota know at the time that it employed Otto Behimer that said Otto Behimer was the senior party in said Interference No. 49,355?

Ames, Thiess, Olson & Mecklenburger,
Solicitors for Defendant.

162 STIPULATION.

The hearing on defendant's application for leave to file interrogatories was had on January 14, 1938, and the Court then and there, because of plaintiff's opposition, denied all save the first five interrogatories. The Court ruled: "I am not going to require answers to interrogatories on things that you are going to examine the witnesses about."

163 PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES.

Now comes Hiram J. Halle, President of Universal Oil Products Company, plaintiff above named, and in compliance with the order of the District Court entered herein Jan. 14, 1938, does answer defendant's interrogatories by said order directed to be answered, as follows:

Interrogatory No. 1. The answer to this interrogatory is Yes.

Interrogatory No. 2. The answer to this interrogatory is August 20, 1927.

Interrogatory No. 3. The answer to this interrogatory is No.

Interrogatory No. 4. The answer to this interrogatory is January 3, 1933.

Interrogatory No. 5. The answer to this interrogatory is Yes.

(Sgd) Hiram J. Halle.

164 State of New York, } ss.
County of New York. }

Hiram J. Halle, being duly sworn, deposes and says that he is the President of Universal Oil Products Company, plaintiff above named; that he subscribed his name to the foregoing answers to Interrogatories 1 to 5 inclusive; that he has read said answers, knows the contents thereof, and that the same are true, to the best of his information and belief, and are responsive to the interrogatories.

Hiram J. Halle.

Subscribed and sworn to before me this 16th day of February, 1938.

L. M. Healy,
Notary Public.

(Seal)

L. M. Healy,
Notary Public, Westchester County.
Certificate filed in N. Y. Co. No. 890.
Commission expires March 30, 1938.

Filed February 18, 1938.

166 AMENDMENT TO ANSWER OF DEFENDANT, GLOBE OIL & REFINING COMPANY. Filed Feb 9, 1938.

(Filed February 9, 1938.)

Defendant amends the Amendment to Its Answer by striking the last six (6) lines of sub-paragraph (f) of Paragraph L and inserting in lieu thereof, the following:

That on information and belief, to-wit, in 1925, 1926, and 1927, plaintiff, through its agents, did wrongfully conspire with certain employes of The Texas Company to purloin private and confidential documents and records of said The Texas Company pertaining to the said question of prior invention by Behimer over Dubbs and in furtherance of said conspiracy and in consideration of large sums of money paid, and offered to be paid, by said agents of the plaintiff to said employes of The Texas Company said employes of The Texas Company did purloin and did attempt to purloin said records of The Texas Company and did deliver them, or certain of them, to said agents of the plaintiff.

Ames, Thiess, Olson & Mecklenburger (sgd)
Solicitors for Defendant, Globe Oil & Refining Company.

168 MOTION. Filed June 2, 1938.

(Filed June 2, 1938.)

Now comes the defendant, Globe Oil & Refining Company, by its solicitors, Ames, Thiess, Olson & Mecklenburger, and represents to the court that upon the basis of certain memoranda heretofore supplied by the plaintiff to the defendant, it is evident that there are in the possession of the plaintiff the following documents, books of account, records, ledgers, journals, etc., all of which contain evidence material to the issues now on trial before this court, to-wit:

(a) Ledgers, books of account, and journals relating to the following accounts:

Texas Interference Account
Legal
O. W. Account
Litigation Expense S. O. S.
Employees Working Fund
C. P. Dubbs Special

Interference 49,355
Reflux
Reflux 49,355
C. P. Dubbs Special Account
E. W. F. Account.

(b) Vouchers and checks drawn upon the following voucher numbers:

No. 23,818	No. 29,606
23,704	29,571
24,194	33,006
24,405	33,007
24,406	34,255
24,624	34,553
24,623	35,015
25,113	35,207
24,986	35,928
24,691	36,930
25,373	36,929
26,818	35,945
27,093	38,310
27,700	37,665
28,863	38,536
27,607	38,592
30,636	41,388

(c) Books of account, records, ledgers, journals, etc., relating to moneys paid to Otto Wannack during the period of his employment by Universal Oil Products Company or Carbon P. Dubbs or any other employe or agent of Universal Oil Products Company.

(d) A check issued by Universal Oil Products Company on the basis of an expense account rendered by Otto Wannack dated September 4, 1925, upon the memorandum of which appears the following legend:

"Note: Draw check to A. W. Lindahl and deposit O. W. acct."

(e) Reports, correspondence, and telegrams by and between Universal Oil Products Company and/or Carbon P. Dubbs and Otto Wannack, referring or pertaining to the investigations conducted by Otto Wannack in relation to the Texas Company.

Defendant accordingly moves the court for an order requiring the plaintiff to produce, instanter and upon the

trial of this cause, the above described documents, books of account, records, ledgers, journals, etc.

Ames, Thiess, Olson & Mecklenburger,
Solicitors for Defendant.

171 PETITION FOR SUBPOENA DUCES TECUM. Filed June 28 1938.

(Filed June 28, 1938.)

To the Honorable William H. Holly, Judge of the District Court for the Northern District of Illinois, Eastern Division.

Petitioner respectfully shows to this court

1. I am the attorney for the defendant in the above-entitled cause.

2. The above-entitled action is brought by plaintiff against defendant for alleged infringement of United States Letters Patent No. 1,392,629, issued October 4, 1921 to Carbon P. Dubbs, and No. 1,537,593, issued May 12, 1925 to Gustave Egloff.

3. The books, papers, run sheets, records, etc., hereinafter mentioned are material and necessary evidence in said cause for the following reasons:

The said books, papers, run sheets, records, etc., in conjunction with the testimony of other witnesses heretofore examined in open court will show, or tend to show, that while said Dubbs patent was pending in Interference No. 49,355 in the United States Patent Office with an appli-
172 cation of one Otto Behimer and while the Dubbs claims now being asserted in the case at bar against this defendant were in interference and subject to being held invalid because of priority by said Otto Behimer, the plaintiff hired away from the employ of The Texas Company, Assignee of the Behimer application, one Maurice S. Beyt and paid him large sums of money; that said Maurice S. Beyt when hired by plaintiff had in his possession books, papers, run sheets, records, etc., bearing upon the prior invention by Behimer and that said Maurice S. Beyt was hired away from The Texas Company in order to suppress the evidence relating to Behimer's prior invention. Thereafter, the claims of the Dubbs patent now in suit remained unchallenged and uncontested in so far as priority by Behimer was concerned, all of which, in the opinion of the

petitioner, materially and directly bears upon the standing of the plaintiff, Universal Oil Products Company, in this court and its right to seek any equity based upon the said Dubbs patent.

4. Said books, papers, run sheets, records, etc., are, as he is informed and verily believes, now in the possession of Maurice S. Beyt, 1041 S. Gunderson Avenue, Oak Park, Illinois. Petitioner does not have copies of these books, papers, run sheets, records, etc., and therefore is unable to particularize or better identify the same except as hereinafter set forth.

Wherefore, petitioner prays that this Court order a subpoena duces tecum to issue in the above-entitled cause addressed to Maurice S. Beyt, 1041 S. Gunderson Avenue, Oak Park, Illinois, and requiring him to produce forth-
173 with, before this Court the following described books, papers, run sheets, records, etc., to-wit:

All books, papers, run sheets, records, flow sheets or other documents dealing with, or relating, or pertaining in any way to experiments made by Otto Behimer while in the employ of The Texas Company, particularly to experiments known as Nos. 8, 18 and 11B and also, any books, papers, run sheets, records, flow sheets, summaries, or other documents relating or pertaining to Behimer's experiments on the so-called clean circulation process and the jet pump.

Ames, Thiess, Olson and Mecklenburger,
Petitioner and Attorney for Globe Oil & Refining Company.
J. B. Thiess.

State of Illinois, }
County of Cook. } ss.

J. B. Thiess, being duly sworn deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the contents thereof and the statements made are true to the best of his knowledge, information and belief.

J. B. Thiess.

Subscribed and Sworn to before me this 9th day of June, 1938.

Joseph Mendriski,
Notary Public.

My commission expires Sept. 7, 1939.

175 CONDENSED NARRATIVE STATEMENT OF EVIDENCE.

IN THE UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

Universal Oil Products Company, Plaintiff,
vs.
Globe Oil & Refining Company, *Defendant.*
} No. 10744.

Before: Hon. William H. Holly, U. S. District Judge.

Appearances:

Messrs. Pam, Hurd & Reichmann, by Mr. Alexander F. Reichmann, Mr. Thomas G. Haight, Mr. William F. Hall, Mr. Charles M. Thomas, Mr. Walter J. Blenko, Of Counsel for Plaintiff.

Mr. Arthur C. Denison.

Messrs. Thiess, Olson & Mecklenburger, by Mr. J. Bernhard Thiess, Mr. Thorley von Holst, Mr. Sidney Neuman, Mr. Robert W. Poore, Of Counsel for Defendant.

176 ABSTRACT OF TESTIMONY
ON
ISSUE OF UNCLEAN HANDS.

(Taken in the District Court on April 12 to 15, June 1 to 3 and 7 to 9, 1938.)

DEFENDANT'S CASE.

180 I. J. RINGOLSKY, Kansas City, Missouri:

69 *Direct Examination by Mr. von Holst.*

I am an attorney at law and have been practicing in Kansas City since August 11, 1886.

I know Mr. Hiram J. Halle and see him in the courtroom. Mr. Halle is president of the Universal

70 Oil Products Company. He is the man that handles all the business of the company.

I know a lawyer in Kansas City by the name of Scofield and have had a conversation with Mr. Halle
71 about him. I had this conversation with Mr. Halle about Scofield about February 24th, 1937. I was in New York City. The meeting was in the Universal Products Company's office. Mr. Halle, Mr. Behrens, Mr. Joseph Danciger and myself were present. Mr. Behrens is the attorney for Mr. Halle, as I understand, and also attorney for the Universal Company and secretary of that company.

72 I told Mr. Halle that my firm in Kansas City, and another firm of lawyers in Kansas City, had some stock in a company that owned a patent, and that one of my partners, Mr. Boatright, went over to see Mr. Scofield and talked about their retaining him in the little patent that we were interested in, and after they got through with that conversation he asked Mr. Scofield if he knew anything about cracking patents. Mr. Scofield says, "I know all about it. I know all about it. I got the patents for Mr. Behimer and the disclaimers and got the patent for the Universal." Mr. Boatright reported that to me and I told that to Mr. Halle. And I said that Mr. Boatright
72 181 asked him if he would accept a retainer to help the Danciger Oil & Refining Company in their
73 suit, in the Universal suit,—we represented the Danciger Company at Fort Worth in the Federal Court there,—and I told him that Mr. Scofield said yes. He was willing to accept the retainer.

Mr. Boatright reported that Mr. Scofield stated that he goes to New York every 30 days representing the Kellogg Company, a large engineering company, to look after their patent matters.

74 I told him that I told Mr. Boatright that we did not want to hire Mr. Scofield because I knew and was told that the Kellogg Company owned a third of the stock of the Gasoline Products Company, that belonged to The Texas Company—I do not know the relationship but they are one, The Texas Company and the Gasoline Products Company. Mr. Halle then stated, as I recall, "Look out for that man Scofield, he is bad. He was associated with a lawyer by the

name of Belknap, who in his time was the best patent lawyer in the United States, and Mr. Dearborn stole
75 Mr. Scofield from me and he had, and he knew all about my patents, had records"—he had his records and private papers and knew all about them, and he says that "he stole Scofield from me and I stole Behimer from him." That is the substance of it, that was the substance of the conversation as I recollect it.

I just asked him there at that time, either at that time or later when we were alone, I don't know which, my recollection is that at the same time because I do not recall ever talking on this subject twice with Mr. Halle, I asked him if Mr. Behimer was still alive, and he said "You bet he is alive, but if Mr. Dearborn thinks that he will ever take his deposition or cross-examine him, he is mistaken." That is all the conversation.

75 182 I had a further talk with Mr. Behrens on this
76 same subject on March 17, 1937, in the offices of the Danciger Brothers Refiners, Inc., in Forth Worth. There was a directors meeting of that company and all the directors were present there. The Danciger Brothers, and there was an attorney, Judge Allen was there representing the Danciger Refining Company also of Forth Worth. And there was Mr. Farley, one of the directors, of Kansas City, Missouri. And I think Mr. Burke was there, he worked for the Danciger Company at Tulsa. As I recall this chemist, I cannot think of his name, a chemical engineer was also there, I cannot recall his name either. Quite a crowd was there. Mr. Behrens was there. And Mr. Behrens made a talk probably an hour and a
77 half or two hours to the directors, giving his reasons why he thought that the Danciger Company ought to take a license from the Universal, and that conversation was at that time, that day.

Mr. Behrens called at my room in the hotel in Fort Worth that night, and we talked until probably 11 or 11:30. I told Mr. Behrens that I might, the next morning, which was March the 17th, tell him what I had in my mind about a defense to the Universal suit against the Danciger Company. I had told Mr. Halle and told Mr. Behrens that I thought we had a

defense that would throw them out of court. I told them that several months prior to that, but never told them what the nature of the defense was. And they wanted to know what it was. Mr. Halle did and Mr. Behrens did, and I told Mr. Behrens that probably the next morning if he would call me up at ten o'clock that I would tell him what that defense was if he wanted to know.

The next morning Mr. Behrens came over to the
78 183 Danciger offices about ten o'clock, the Refining Company offices in Fort Worth, and I had submitted the matter to the directors whether or not I could tell Mr. Behrens the defense, and they consented to it being done. And then I said to Behrens "I have concluded to tell you a defense that we have been talking about, you have been soliciting to find out for the past eight or ten months, ever since I made up my mind that there was a defense," and I said, "If you will come in Mr. Hock's office"—Mr. Hock is an attorney at law, who works for the Dancigers tending to their business exclusively, and has his office in their office, and he said "All right." We went into Mr. Hock's office, Behrens and Hock and I, and I said, "Now Behrens, I am going to tell Hock from the beginning all about this defense, and you listen to it." It was a very small room, and Hock sat on one side of the table and I sat on the other.

80 I told Mr. Behrens that when we were down here in 1936, we called on Mr. Halle and we called on Mr. Dearborn of the Gasoline Products Company, and that Mr. Dearborn told us after we had lettered a contract that he said—Mr. Boatright and myself, were there, and a Mr. Sullivan, who was attorney for the Gasoline Products or the Texas, I don't know which, but he was there—he said Mr. Halle stole Behimer from him and that after he left they found records were gone. But he says, "I do not accuse Mr. Halle of taking those records," that is what Mr. Dearborn said. But
81 he said, "We have affidavits and we have some statements of the parties that have been with us for eight years during the time that Mr. Behimer was there, and we can sustain the Behimer patent," or words to that effect, I am giving my best recollection.

184 That is what I said to Mr. Behrens. Then I told Mr. Behrens what Mr. Halle stated about Mr. Dearborn stealing Mr. Behimer.

83 I told Mr. Behrens—I told Mr. Hock in the presence of Mr. Behrens, that in my opinion your case against Danciger can be thrown out on account of the coming in court with unclean hands. And I gave him an authority, and Mr. Behrens says, "I agree with you we have to dismiss as to Dubbs but we have other patents," and I told him, in my opinion, the other patents would fall with the Dubbs patents on the grounds of unclean hands.

Mr. von Holst: Q. Did Mr. Behrens in that conversation deny what you said as to the conversation with Mr. Halle?

Mr. Haight: Now I object—leading and suggestive.

The Court: The objection is sustained to that question as leading. He can tell the conversation. That is leading.

Mr. von Holst: Q. Have you told the whole conversation.

84 A. Mr. Behrens did not deny that he stated that.

Q. Did Mr. Behrens say anything in addition to what you have already stated?

A. He said he would call Mr. Halle, he said he thought I could not tell what Mr. Halle said because it was said in the course of negotiations for a compromise or settlement with the Danciger Oil & Refiner Company. He said he would call up Mr. Halle and he told me afterwards that Mr. Halle stated that he did not think I had a right to say anything about what he said because it was said in the course of negotiations for a compromise.

85 185 I had a further talk with Mr. Behrens the day the National Refining suit was dismissed at

88 Topeka, Kansas, which was April 26, '37. That was with Behrens in my home. Mr. Behrens called me up and said he just came from Topeka, that the National Refining Company took out a license, and I says I know it. He says, how did you know it. I told him. I says, I am out here at my house all alone. What are you doing? He says I cannot go out until eleven o'clock. I said, if you can come out and visit me—

89 The Court: Just tell us the conversation.

A. The conversation, excluding all other matter except this matter was this, I will have to separate it—Mr. Behrens stated then that we might have to dismiss, have to dismiss the Dubbs patent 629 but the Danciger Brothers were infringing on eighteen other patents that they had that they could sue on.

186 *Cross-Examination by Mr. Haight.*

90 I represent the Danciger Oil Refining Company as an attorney. Danciger was sued by Universal Oil Products Company for infringement of the Dubbs and other patents. Suit was filed before I ever saw H. J. Halle.

91 I am not a stockholder in the Danciger Company and have no financial interest other than as its attorney. On June 11th, 12th and 13th and July 26th, 27th and 28th, 1936, in company with Joseph Danciger and Boatright I conducted negotiations with Halle in New York for the purpose of settling the infringement suit and the taking of a license by the Danciger Company. That suit is still pending.

92 We were again in New York on February 23rd,
93 24th, and 25th, 1937, but Mr. Boatright was not with us.

In New York on June 12th or 13th, 1936 Boatright and I saw Dearborn, who told us that Behimer had been stolen by Halle from The Texas Company.

93 Q. You knew that Behimer had been asserted at
96 one time as a prior inventor to the clean circulation process to Mr. Dubbs?

A. Yes, sir.

Q. You did not think much of Mr. Halle after that, did you?

A. I have heard a great deal about Mr. Halle—

Q. No, no.

A. I thought a great deal of him.

Q. You thought a great deal of him at that time?

A. Yes, I did.

93 187 Q. Even after Mr. Dearborn had told you that?
96 A. Yes.

Q. Notwithstanding that you thought that they could throw out the case on unclean hands?

A. Yes.

Q. You still thought a great deal of Mr. Halle?

A. Yes. And I will tell you the reason for that.

Q. No, I don't care about that. You thought he was a very decent fellow?

A. I thought Mr. Halle, notwithstanding all I had heard, had some awful good points.

Q. I don't care what you—

Mr. Von Holst: Let him answer.

Mr. Haight: I am going to have a responsive answer.

Mr. Von Holst: Your Honor, I think he is making a responsive answer and he should not be cut off like that.

The Court: Well, the witness can answer yes or no on some of those questions.

A. I have to state why.

Mr. Haight: Q. We will get along a good deal better, Mr. Ringolsky, you know your own counsel—

A. Well let me state—

Q. Wait a minute now. You know that your own counsel may redirect and bring out things that you want to bring out, don't you?

A. I guess that is right.

Q. You are an experienced trial lawyer aren't you?

93 188 A. I am.

96 Q. Then why are you trying to inject these things when you know I am entitled to a responsive answer?

A. I am not trying to inject anything, Judge.

Q. All right.

A. When you ask me if I had a good opinion of Mr. Halle and thought much of him, and I says I did, I can explain the reason.

Mr. Haight: I did not ask you that.

The Court: Well you know that should come out from the other side.

The Witness: Can't I explain after I do answer?

The Court: You know you have objected many times to a witness doing that in your trials.

The Witness: I wanted to make the explanation, your Honor, that is all right.

Mr. Haight: Q. Now you stated that the thing that Mr. Halle had done, which Mr. Dearborn had related to you, entitled you to have the Danciger case

dismissed on the doctrine of the—what is the name—Keystone Driller case versus General Contracting Company?

A. That is what I thought.

Q. Is that right?

A. That is right.

Q. And you still thought that Mr. Halle, notwithstanding that he had done something that entitled you to a dismissal of the suit, without regard to the merits, was a pretty decent kind of an individual, is that right?

A. I thought a great deal of him.

96 189 We negotiated with Halle further in July, on
97 the 26th, 27th and 28th, and then I went home and put the matter up to the board of directors of the Danciger Company. We declined to take a license and the reasons for so doing were given in my letter of August 24, 1936 to Mr. Halle.

98 Q. Now with your profound respect that you had for Mr. Halle, you did not tell him, as I gather it, until the following February of this conversation with Mr. Dearborn?

99 A. I did not.

Q. Why didn't you?

A. Well, it was my notion of what our defense would be to this suit, I did not think it would be advisable as the attorney for Danciger to tell him of that possible defense, not at that time.

Q. Why not?

A. Wait a minute, Judge.

Q. Just a minute. Why not?

Mr. von Holst: Let the witness answer.

Mr. Haight: No, he wants to go off on something else.

The Court: I think he has answered the question.

Mr. von Holst: Let him answer the question.

The Court: I said, I thought he had answered it.

Mr. von Holst: I thought you said, let him answer.

The Court: No.

Mr. Haight: Q. Why didn't you want to tell him? You had respect for him, you believed he was a square man?

A. You don't let me tell you why.

190 Q. I want you to tell me why.

A. I mean, you don't want me to tell you why I felt so kindly towards him, towards Mr. Halle.

100 Q. No, I don't want you to tell me that. I want you to tell me why, when you felt kindly toward him and had profound respect for him—

A. Because—

Q. If he had done something which you considered sufficient to throw the case of the Dancigers out, you waited until February to tell Mr. Halle of it.

A. I did not tell him of this defense any more than —I did not tell him of the defense except that I had a defense that I thought would throw him out of court.

Q. Yes. But you did not tell him?

A. I did not, no, of course not.

Q. Why do you say of course not?

A. Of course you would not either.

Q. Why do you say I would not?

A. Well, because if you were representing the defendant why you are not going to tell your adversary the details of your defense.

Q. Didn't you think that some time or other you would have to reveal it?

A. When the suit was brought, yes.

Q. Well, the suit was brought and pending; it had been there for two years?

A. I mean when the defense was made, you understand.

101 191 Q. Didn't you think you would have to set it up in your answers?

A. Sure.

Q. Then why didn't you put it in your answer at the time?

A. At the time that letter was written, at the time that letter was written in August of '36, is that right, yes, that is the date of it?

Mr. von Holst: August 24th.

Mr. Haight: August '36.

A. August the 24th, Mr. Halle had not made the statement to me about Scofield.

Q. Well, did the fact that he told you that he did not have any use for Scofield because he had left their employ effect your—

A. That is what he told me.

Q. Wait a minute. Did that effect your idea as to this defense on unclean hands?

A. That was not it, that is not the question. That is when he said he stole Behimer from Dearborn.

Q. Yes.

101 192 A. Using the same language that Dearborn *did.*

102 Q. But Dearborn had already told you that?

A. Yes, he told me that.

Q. You did not doubt Dearborn, did you?

A. I did not at that time.

Q. No, you did not doubt Dearborn, did you?

A. I did not know whether we would be able to get, if we could get the proof from Dearborn of the things that he said, to Mr. Boatright and I, I believed it would throw this Danciger case out of court.

Q. You knew Dearborn was an honorable man?

A. I did not know anything about Mr. Dearborn.

Q. What?

A. Except to meet.

Q. You knew he was Vice-President of The Texas Company.

A. That is right.

Q. You knew that?

A. I knew he was head of the Gasoline Products Company and Texas. I did not know anything about his manoeuvers.

Q. You knew he was one of the leading patent lawyers of the country?

A. No.

Q. You did not?

A. No.

Q. You didn't make any inquiry about that?

103 A. Nobody told me or I never heard of it. I assumed that he was a man of considerable ability.

103 193 Q. You thought Mr. Halle was a man of considerable ability too, didn't you?

A. I believe it yet.

Q. You believe it still?

A. Yes.

Q. And yet you want the Court to believe that Mr. Halle said to you representing the people that he had sued, representing people that he had sued,

that Mr. Halle said that if Dearborn thought he was ever going to take Behimer's testimony he was mistaken?

A. Yes, sir.

Q. You want me to believe that?

A. Yes, absolutely yes.

Q. Didn't you think that was one of the most stupid things you had ever heard of a man doing?

A. Well, smart men talk a little too much at times.

104 Q. Didn't you think it was a stupid thing?

A. Yes, you bet, I thought he was off his guard; that he wasn't as smart as he appeared to be. Mr. Danciger and I talked about it.

Q. I don't care what you and Mr. Danciger talked about.

A. Yes.

Q. What did you do to throw him off his guard?

A. Nothing; I didn't expect to—

Q. Nothing?

A. It came out just the same as Mr. Dearborn came out. I didn't ask Mr. Dearborn anything about that or I didn't ask Mr. Halle anything about it.

104 194 Q. But you had made up your mind, hadn't you, prior to that time that you had this defense of unclean hands?

A. Yes, if Dearborn would come across with the information he had given us.

Q. And you thought it was a very peculiar thing, didn't you, a stupid thing for Halle out of the clear sky—

A. Absolutely.

Q. You said he didn't have to say it to you; it wasn't in response to any question, was it?

A. Absolutely not.

Q. Right out of the clear sky?

A. Absolutely.

Q. Like a bolt from the blue?

A. Yes.

Q. "If Dearborn thinks that he is going to take Behimer's testimony he is mistaken."?

A. That is after I asked him whether or not Behimer was still alive.

Q. All right.

A. And he said, "He is alive."

Q. And you thought it was a—

A. Mr. Scofield stated that he thought he was dead. That is why I asked him if he was alive.

I then continued negotiations with Behrens. I did not telephone Halle and ask Behrens to come down. He was down there, having settled with another license holder. He had this conference with me and the
106 directors.

Q. And after the directors meeting he then
106 195 told you, after you had told him what Dearborn had said, that the case would have to be thrown out.

A. What Mr. Halle had said.

Q. When did Mr. Halle say that?

A. Mr. Halle said that—Mr. Halle told me about Scofield February the 23rd.

Q. Well did Mr. Halle at that time say that his case would have to be thrown out?

A. No.

107 My conversation with Behrens and Hock took place March 17, 1937. I told Behrens what Dearborn said and repeated what Halle said although Behrens prob-
108 ably was there when I had my conversation with Halle. He was always present whenever there was any conversations with Mr. Halle, at least two. I think I was back there one afternoon, but I don't think he was there.

Q. But he didn't tell you then, did he, in the presence of Halle, that the case would have to be thrown out?

A. No, he didn't. That was when we were in Mr. Hock's room.

Hock, who lives at Fort Worth, is also an attorney for the Danciger Company.

Boatright and I both went up voluntarily and gave the information about these conversations to Thiess on
109 December 17, 1937 and on the basis of that he
196 made an affidavit. The affidavit was not dictated in our presence. I do not remember whether I or Boatright saw it signed by Thiess. About seven or eight months before, we had tried to retain Thiess' firm to defend the Danciger's suit. He refused to represent them until he got the consent of all of the members of the Winkler-Koch group because the Dancigers did

not belong to that group. He obtained permission when
110 I revealed the information to him on December 17, 1937.

I didn't expect the case at bar to be tried before we tried the Danciger case in Texas before Judge Wilson. I knew that this case had been set for some date, that it had been going on and off for two or three years. I didn't know that it had been set for October and then had to go over, and that the res adjudicata proceedings had been referred to a Master. Behrens told me down in Forth Worth that res adjudicata had been as-
111 serted against the National Refining Company. I didn't know anything about res adjudicata having been asserted in the case at bar.

111 197 I reached the conclusion in June, 1936, that the unclean hands issue would result in a dismissal of my suit if I could depend on Dearborn furnishing proof of what he told us. I didn't think that Dearborn
112 would go back on what he had said because he and Halle were bitter enemies then. I continued negotiations with Halle even after he told me this tale out of the blue. I also continued negotiating with Behrens down in Fort Worth.

I wrote the letter dated March 3, 1937, addressed to Halle stating:

113 "The boys had not had their directors meeting as yet, but Mr. A. Danciger asked me to learn from you the least amount in cash which Universal will accept in full payment for a license from January 1, 1937, to October 4, 1938, for operation of Pampa Refinery and the net least amount in cash it will accept for operation at Longview for same period, the company to receive for the cash consideration the same indemnity and guarantees and agreement on your part that was offered in your proposition to it if it paid $10,000 in cash and took out the license at 10 cents a barrel.

"As soon as I receive reply to this letter will insist on board meeting, and I know it will be held. Enjoyed visit with you and hope time spent and efforts exerted will result satisfactorily to all concerned. I feel confident it will if you will make the cash payment what I think, from conversations with others, it should be. With regards and thanks for courtesies extended, I am, sincerely yours."

114-5 198 This was after my conversation with Halle in which he made the statement about the suppression of Behimer's testimony. I was still negotiating for a license.

Q. Notwithstanding your conviction as a lawyer that what they did was so reprehensible that the case would be thrown out on the ground of unclean hands?

A. Yes. Do you want to know the reason? Can I complete the reason?

Q. Yes, go ahead.

The Court: All right.

Mr. Haight: If his Honor wants it.

The Court: I don't care, because I don't think it makes any difference about his conclusion.

A. I don't mean about the—

Mr. Von Holst: I think the witness would like to explain.

The Court: I don't think—if there had been an objection to the last two or three questions I would have sustained it because I don't think it makes any difference about the opinion of a lawyer as to the merits.

Mr. Von Holst: I think what he was wanting to explain was why he continued negotiating.

The Court: I don't care anything about it.

116 199 *Redirect Examination by Mr. Von Holst.*

Q. You testified on cross-examination that you continued to think well of Mr. Halle after your conversation with Mr. Dearborn in which Mr. Dearborn had made this statement. Will you state why?

A. Mr. Halle told me that he gave $40,000 to establish a school in New York for the professors, Jewish professors that were driven out of Germany, he was a Jew and I was a Jew; and he had written me a letter of condolence when my wife passed away that I thought was the most beautiful letter I ever received. He had introduced me to his sister, and invited me to his home, and I felt kindly toward Mr. Halle, and I
117 think I always will, and that is all there is about it.

200 *Recross Examination by Mr. Haight.*

117-8 I testified to the facts set forth in this affidavit of J. B. Thiess that on or about April 24, 1937, Behrens called at my home and reference was made to what Halle had said concerning Behimer, and also that Mr. Behrens stated that while this was true, Universal had eighteen other patents that Danciger Oil & Refining Company were infringing.

118 Mr. Haight: "Now Mr. Thiess' affidavit is that Behrens said not that they *would have to dismiss it all*, but that Behrens said that what Halle said was true, that while it was true still the Universal had eighteen other patents. Now I want to reconcile those two things. Mr. Thiess did not get it out of the air. If Mr. Ringolsky told him, why does he come here and say that Behrens said we would have to dismiss. I want to give him a chance to explain."

119 I think I told Mr. Thiess that Behrens called at home and said the suit would have to be dismissed. I did tell him about what Behrens said, but I don't recall the 120 exact wording that I used.

Q. Do you think that he was wrong as to what your wording was?

A. I don't think so.

Q. You don't think he was?

A. No.

Q. The wording is different from what you have here this afternoon on the stand?

A. I don't see the difference.

Q. You don't see the difference between a man saying to you he thought a suit would have to be dismissed?

120 201 A. He did say that.

121 Q. And the statement that he said that what Mr. Halle said was true?

A. Oh, no.

Q. You don't find any difference between those two things?

A. He did not say what Mr. Halle said was true.

Q. Do you want to read what Mr. Thiess said?

A. I take your word for that.

122 202 JOSEPH DANCIGER, Fort Worth, Texas:

Direct Examination by Mr. von Holst.

123 I am vice president of the Danciger Oil & Refineries, Incorporated, a Texas Corporation. I know Mr. Hiram J. Halle. I met Mr. Halle on two occasions. I see him in the court room. I recall a conversation with Mr. Halle in the presence of myself and Mr. Ringolsky and Mr. Behrens in 1937. I was in New York in Mr. Halle's office. We had a conversation on February 24th, 1937. During this conversation, there was mention made by Mr. Ringolsky of a man named Scofield.

When we went to Mr. Halle's office from the Hotel
124 Astor, Mr. Ringolsky told me to remind him to ask Mr. Halle about a fellow by the name of Scofield, and he gave me a little memorandum. In Mr. Halle's office I said to Mr. Ringolsky, "Here is the memorandum that you gave me at the hotel that you wanted to talk to Mr. Halle about," and Mr. Scofield's name was on the memorandum and I handed it to Mr. Ringolsky. Mr. Ringolsky says, "Oh yes, I wanted to talk to you, Mr. Halle." That was about the time other matters were talked over, and he says, "Do you know a fellow by the name of Mr. Scofield?" Mr. Halle says "Yes, I know him. He is a bad one, you better watch out for him." And he says, Mr. Ringolsky said "Well, now, I will tell you," he said, "I had my partner,
125 Mr. Boatright talk to him, Mr. Scofield, in Kansas City"—Mr. Scofield is a Kansas City lawyer "and our firm," that is Mr. Ringolsky's firm, "had some
203 other patent litigation in which Mr. Scofield was consulted." And he said that Mr. Boatright asked Mr. Scofield if he knew anything about this refinery and cracking litigation, and Scofield said that he knew all about it, that he was interested with the Universal, Mr. Halle's firm, when this litigation was going on, and in the granting of the original patent and also in the disclaimers. And Mr. Ringolsky said to Mr. Halle "Here we had a fellow that is right in Kansas City that knew all about this thing and I never knew that until Mr. Boatright consulted him." And he also told Mr. Halle that he looked into the abilities of Mr. Scofield and found that he had an engagement to

go to New York every so often in the interest of the Kellogg Company, and the Kellogg Company—

The Court: Just a moment. We have a great number of witnesses in this case, and if we go into a lot of extraneous matter, it is going to take us a long
126 while. What you want of this conversation is that Mr. Ringolsky inquired of Mr. Halle about Mr. Scofield and what Mr. Halle said in response, so all of this—

Mr. Von Holst: I understand the rule of evidence is that the complete conversation must go in.

The Court: Oh, you can ask about the specific thing you want, you get that specific thing in there and then on the cross examination if they want the whole conversation all right, but it is not necessary to drag in every irrelevant thing that does not have anything to do with this case, and just in the interest of shortening it up, that is all.

Mr. Von Holst: Q. Now, after Mr. Ringolsky made this inquiry of Mr. Halle, what was Mr. Halle's reply?

A. Mr. Halle said that he—that Mr. Dearborn stole Mr. Scofield from him, and "When he did that I
204 stole Behimer from Dearborn." And Mr. Halle also said that Mr. Scofield has some of his records
127 when he left him. And then Mr. Ringolsky said "Well, is Behimer still alive?" Halle says "Oh yes, he is alive but Dearborn will never have the opportunity of examining him in the case or taking his deposition."

205 *Cross-Examination by Mr. Haight.*

127 I am the Vice-President of the parent company, the Danciger Oil & Refining Company, a Delaware corporation, and also Vice-President of the Texas subsidiary, Danciger Oil Refineries, Inc. My brother, Dan Danciger, is president. I have two other brothers, Jack and Abraham who is known as Abe.

128 The four of us own the majority of the stock of the Delaware company and the Delaware company owns all of the stock in the Texas company. We have about 1200 other stockholders. Hock is not one of the stockholders. He is the attorney for the company and has
129 an office located in Ft. Worth, having been employed by us for a great many years. Ringolsky has also been employed as our attorney for a great many years.

We have been in the refining business for eight or nine years. We were never in business under the name High Octane Refining Company, although I think we considered that name for a while. We dropped it because we understood another party had already chosen
130 that name. We may have been doing business under that name for a while. That name was changed in September 1932 to Red Ball Refining Company and there was another company known as the Petroleum Refractionating Company owned by me and my brothers, which was a subsidiary of our Texas company. That name was changed to the Danciger Refining Company or the Danciger Refineries, Inc.

131 Our Texas company preceded these other com-
206 panies. There was another one known as the Danciger Oil & Refining Company of Texas. All three of these companies were dissolved in 1935 and our present Texas company formed by consolidation. Our Texas company was sued by Universal Oil Products Company in 1935, although I don't know which company they sued because that litigation is handled in our Tulsa office. The suit was on the Dubbs patent, the
132 Egloff patent and maybe one or two others. I placed the defense of that suit in the hands of Ringolsky, Hock and Judge Allen of Ft. Worth. I did not go to New York in June of 1936 with Ringolsky and Boatright to see Halle. I was there July 26, 27, 28 and 29, 1936.

133 I saw Dearborn once with Ringolsky in July of 1936 in New York. The next time I saw Halle was in February, 1937, and I saw Halle only twice in New York. The purpose of my visit was an attempt to dispose of this litigation. I had known prior to February 24th from Rinkolsky that Dearborn had told him that Behimer had been hired by Universal from The Texas Company.

134 Ringolsky told me shortly after he saw Dearborn that he thought that the stealing of Behimer would constitute a defense against this litigation. When I came to see Dearborn and Halle in July, 1936, I knew what Dearborn had told Ringolsky as to the alleged stealing.

135 My attorney did not have any confirmation at that time from Halle on the stealing of Behimer. Ringolsky was investigating the law on it at the time and still

he said we had better try to get rid of this litiga-
207 tion because there are so many suits involved,
so many claims, so many patents. When I came to Halle's office on February 24th Ringolsky did not ask Halle whether or not it was true that Behimer had been stolen. Halle's statement was entirely un-
136 expected by either one of us. I was not so much astonished as Ringolsky since I did not get the legal import at the time. I realized at the time that it was a confirmation of what Ringolsky had told me.

Q. I suppose when you went out of the room that you were all very much pleased that there had been this confirmation?

A. No. I did not realize the import of it, but as we walked to the elevator Mr. Ringolsky says, "That puts in my mind something, I believe there is something to it." I said, "What is it?" He said "Well, I will tell you about it, I want to think it over."

I recall an occasion when Behrens came down to a directors meeting at Ft. Worth subsequent to that
137-138 time, March 17, 1937. He did not come down at our request, although I believe Ringolsky told him we would see him any time he was in Ft. Worth. We didn't care to hear before all of the directors the reasons why and the advantages which would inure to
139 our company if we took a license under Universal patents at that time. We knew all their arguments. We have always tried to get rid of this litigation by compromise of settlement and were trying on our visit there on July 24th or 26th.

140 The question of settlement was put up to Farley who
raised various objections based principally on the
140 208 proposition that The Texas Company was claiming that we would also infringe some of their patents. We didn't care for Behrens to go down to explain that whole situation to Farley and the other directors at that time. We knew all that they claimed for their process. We did enter into some kind of tentative agreement in July, 1936, which everybody that was present initialled.

209 *Redirect Examination by Mr. von Holst.*

141 Q. This tentative agreement had what provision as to the defense of any patent suits that might be brought against you should you take the license?

A. It was a tentative agreement setting out the 142 terms on which our Board of Directors, as I remember it, were to consider a settlement of the Universal suit.

Q. Yes, but what provision did it have as to a defense by Universal of all litigation, patent litigation, if you took a license?

A. Well, as I recall, they would defend us against all—

Mr. Haight: Why go into recollection?

A. The instrument will tell just what its terms are.

The Court: The instrument will be better.

Mr. Von Holst: Q. But you were being threatened with suit, and were being sued at that time by other companies than the Universal, is that right?

A. We were being threatened, every refinery was threatened I think with this same class of suits. We were threatened by The Texas Company and others, Gasoline Products, Donnelly, a whole bunch of them, there was a whole bunch of them that threatened suits on this same class of litigation.

143 Q. It was brought out in cross-examination that at this conference in February of 1937, in Mr. Halle's office in New York, when this question came up about Scofield, that you had in addition to that conversation, you had talked settlement, is that right?

A. Yes, we had been talking settlement for two days, and just when we were about to leave Ringolsky wanted to be reminded of this Scofield business.

210 Q. So that all talks and statements were finished when this Scofield matter came up, is that correct?

A. Yes, that was all finished up.

211 *Recross Examination by Mr. Haight.*

143 Halle guaranteed, if we took a license from Universal, to protect and hold us harmless against all suits that might be brought against us by The Texas Company or Gasoline Products Company.

144 He proposed that in the February conference when he said "I will hold you harmless" and "give you a guarantee". I considered that the Gasoline Products Company and The Texas Company were associated and my impression was that both of them could sue.

212 W. C. HOCK, Fort Worth, Texas:

145 *Direct Examination by Mr. von Holst.*

I am a lawyer. I have met Mr. Behrens on two occasions, and see him in the court room. I recall a conversation in my office with Mr. Behrens at which Mr. Ringolsky was present. That was in March of 1937.

Mr. Ringolsky and Mr. Behrens came to my office
146 on the morning of March 18th, as I recall, and after a few introductory remarks Mr. Ringolsky made the statement that "I want to relate to you a series of conversations I have had with Mr. Halle in the presence of Mr. Behrens". And Mr. Ringolsky stated that he and two of the Danciger brothers, Dan Danciger and Abe Danciger and Mr. Boatright, one of Mr. Boatright's partners, and Mr. Boatright had been in Washington and New York in '36, I think it was in the summer of '36; that after they had entered into a tentative agreement and initialed, with Mr. Dearborn representing the Gasoline Products, that Mr. Dearborn volunteered the statement that Mr. Halle had stole Behimer from The Texas Company, or the Gasoline Products, I forget which, and that the Universal had employed or bribed some employes of The Texas Company to get into their files and extract certain documents from their files in connection with the patent litigation then pending, as I understood, in Washington-interferences. Mr. Ringolsky stated to Mr. Behrens that that looked like to him that it would cause a dismissal of their suit against Danciger
213 on the ground of unclean hands. And I handed Mr. Behrens a citation of authorities or two.
147 Mr. Behrens stated that he probably was correct; he thought he was correct on the Dubbs patent, but it would not be a cause of dismissal as to the other patents involved, some seventeen or eighteen, I don't

recall the number. And Mr. Ringolsky countered that he thought they would all have to go out if one went out. Mr. Ringolsky further stated, addressing his remarks to me, that when he and Joe Danciger were in New York in February, I think it was, of '37, in a conference with Mr. Halle and Mr. Behrens was there, that after they had talked negotiations or settlement, I believe it was for some time they were there, two or three days, that Mr. Ringolsky asked Mr. Halle if he knew a man by the name of Scofield, a lawyer of Kansas City, stating that he had learned that Scofield knew something about the Dubbs and Behimer patents, and that Mr. Halle replied yes, he knew Scofield, that he formerly had been with Mr. Belknap, as I recall, a patent lawyer for the Universal,
148 and that Mr. Scofield was assisting Mr. Belknap in this patent litigation, as I recall it, and that Mr. Dearborn of The Texas Company stole Scofield from the Universal, and that he, Halle, had stolen Behimer from The Texas Company, paying him a very large sum of money; that is, the Universal was paying Behimer, I believe the amount was stated to be $100,000. Well Mr. Behrens remarked that he was a little wrong on his figures.

This is what Mr. Ringolsky was relating to me in the presence of Mr. Behrens. It was what Mr. Dear-
150 born had said. That is the substance of the conversation. I do recall that after Mr. Ringolsky had related the conversation I have stated here in substance, Mr. Ringolsky said that he was of the opinion that it would put the case out of court and that Judge Wilson of the District Court at Fort Worth would believe
214 him, and I think I made the remark that I didn't suppose there would be any question about Mr. Halle having made the statement that Mr. Ringolsky attributed to him, and that was all that was said about that. Mr. Behrens made no remark on that.

215 *Cross-Examination by Mr. Haight.*

151 I do not at this time have a private practice in addition to representing the Danciger Refining Company. I represented them in Kansas City from 1917-1924. When they moved their office from Kansas City, I resigned. I went back with them in July of 1932 and have been with them ever since.

I did not come to Chicago with Ringolsky to see Thiess on March 18th, and was not told anything of the conversation at that time.

I did not see Behrens at the time he called at Ringolsky's home in Kansas City in April. I do not know why Behrens was brought in to my office to have these facts related to him but I knew it was going to be done in my presence. When the entire statement of facts was related to him, Behrens said that Ringolsky was probably correct in believing that that would require a dismissal of the suit on the Dubbs patent but would not effect the others. I don't recall whether it was before Ringolsky had told of the conversation he had with Halle or not but it was during the conversation that that statement was made.

Q. Let us assume that they had brought everything in the conversation with Mr. Halle in New York and the conversation with Dearborn, and what not, and that then Behrens said that that would probably result in the dismissal of—that Ringolsky was probably correct in believing that that would result in a dismissal of the suit on the Dubbs patent, but wouldn't affect the others, is that correct?

A. That is right.

Q. You knew that Mr. Behrens was a pretty young man?

216 A. I judge he would be a man of some ability.

Q. I didn't ask you about ability; I asked you about his age.

A. He is not a very old man.

Q. You knew that he occupied a subordinate position in the Universal Company, or didn't you know anything about it?

A. I understood he was secretary and assisted Mr. Halle.

Q. He assisted Mr. Halle?

A. Yes, at that time.

Q. Yes, and so far as you could see he was perfectly sane and sober when he made that statement?

A. Yes.

217 *Redirect Examination by Mr. von Holst.*

Q. Mr. Hock, did Mr. Behrens at any time during that conversation deny that Mr. Halle had made these statements?

Mr. Reichmann: That is objected to. Leading and suggestive.

Mr. von Holst: That is proper, your Honor.

The Court: Did Mr. Behrens deny—

Mr. von Holst: In Mr. Hock's presence during that
156 conversation, when Mr. Ringolsky had related these matters which had taken place at the conference in February, at which Mr. Behrens was also present, I am asking Mr. Hock whether during that conversation Mr. Behrens ever denied that Mr. Halle had made the statements.

Mr. Haight: The witness already stated on direct examination, I said I did not think there would be any question about what Mr. Halle had said, and Mr. Behrens made no remarks.

The Court: I think this question would be objectionable as being leading anyway. You can ask for the conversation. You have asked for the conversation, and he has gone over it.

Mr. von Holst: I have asked for the conversation.

The Court: He has gone all over it.

Mr. von Holst: Now I am entitled to prove a negative.

The Court: You cannot ask this witness what was not said. You can ask him what was said.

Mr. von Holst: I have.

157 The Court: And that excludes anything he doesn't tell.

158 218 G. H. BRUNOW, Port Arthur, Texas:

Direct Examination by Mr. Von Holst.

At present I am employed by the Gulf Refineries. I have worked for The Texas Company, beginning the first part of 1919 in the machine shop at Port Arthur, Texas. I worked there six years or better, until the
159 latter part of '26. I was working for The Texas Company in January of 1926. While I was working for The Texas Company I met a man named Otto Wannack. That was about the latter part of '25. I was doing a little automobile work. My brother-in-law owned a garage. I passed by and I helped the boys out. He came there with his car and had some work

to be done on it. That is how I got acquainted with him. He did not say anything to me that first time
160 that he met me. The next afternoon he came back again. He got to talking to me about the cracking process, and I was familiar with the cracking process because I had worked in it, and so he told me he wanted to find out some information concerning the cracking process; he was working for the Universal Oil people, representing them, trying to get some information on a certain cracking process. He said he wanted some certain run sheet dated back a certain date. He asked me if I could get it, that is all. I told him I didn't think I could, but thought I could probably make arrangements. I knew all the work that had been done there.

Wannack knew I was working for The Texas Company in the research laboratory at that time. He was pretty well informed when he came down about
161 219 where I was working. Besides these run sheets, he wanted a letter. This letter was between The Texas Company office, the refinery, and the New York office. He said the letter related to an operation of the still on a certain date, a certain operation they tried and it wasn't a success. I don't remember what date that was. Wannack told me at that time what he would do for me if I got this information. He said he would
162 give a considerable sum of money. We didn't make any arrangements right then because I wasn't so positive who he was representing. So I got in touch with a party by the name of Beyt. I worked with Beyt about four or five years, and see him in the court room. He is the gentleman with the glasses sitting next to Mr. Behimer in the first row. That is Mr. Beyt.

We talked things over about this, and we wasn't satisfied that Wannack was representing what he was
164 supposed to be representing. Beyt and I talked to Mr. Wannack, and so we said, well we will have to have more evidence to prove that he was working for the
165 Universal Oil; in other words, to know who he was, who Wannack was. He said "Well, I will make arrangements for Dubbs to come down to Beaumont and meet you." So he made that arrangement. Mr. Dubbs came down, and Wannack introduced him to us. This was in Beaumont, Texas, in the Beaumont Hotel. Mr.
166 Wannack, Mr. Beyt and Mr. Dubbs and myself were

present. I know Mr. Dubbs. I see him in the court room, the man with the gray suit on. He is the man that I met at the Hotel Beaumont at that time. That was somewhere around the latter part of 1925 or the first part of 1926, I am not positive on the dates.

Q. Now will you say what was stated at that meeting, at that conversation?

167 A. Well, we said if we made any move that they would fire us and run us out of Texas. Mr. Beyt said he had a home, hadn't it paid for; of course I had one too in the same condition, but Mr. Dubbs told
220 Beyt that he needn't bother about that, that he would buy his home and send a car down there after him, he wouldn't have to be bothered about anything. Send his car down and bring up the cargo and he would hire him at four hundred dollars a month, and also myself.

Q. Now what else was said at this conversation if you recall? Do you remember anything coming up about any man named Powell?

A. R. C. Powell, yes. Mr. Dubbs said I could make arrangements to get R. C. Powell, and at that time Powell was construction engineer on the cracking process on what is called the Holmes and Manley still. And so we wanted to know what he wanted to do with him, that is in the conversation. We told him he didn't know anything about the cracking process, his was experimental work. Mr. Dubbs said who is the man. We told him Mr. Behimer. We told him we didn't think that there would be a possible chance of getting him. Well he says if money can get him I will get him.

168 Q. Did either Mr. Dubbs or Mr. Wannack make any arrangements as to compensation with you and Mr. Beyt?

A. Yes, I think it was one hundred dollars or two hundred dollars a month that we would call maintenance fee and expenses.

Q. What did they ask you to do for that compensation? Just state as well as you can recall who said the thing that was said and what it was about.

A. Well, it was about the getting of this informa-
169 tion, these run sheets. So this information we had to get a certain date back, and Mr. Beyt had charge of Mr. Behimer's files, and he was to get the sheets, the

run sheets, and hand them to me at the gate and we was to take photostatic copies of them and hand them back to Mr. Beyt and put them back in the files the
221 next morning.

Q. And was this work if you delivered papers to be included in the remuneration or the money, or was it to be extra?

A. Well, Wannack said if we got the right information then we could run up, in fact he said we could practically make our own price. This was after the conversation at the hotel. Mr. Dubbs was not there. Mr. Dubbs told us in the conversation at the hotel that Wannack was representing him down there and when we couldn't get in touch with him to get in touch with Mr. Dubbs personally in Chicago. After this meeting
170 at the Hotel Beaumont I saw Wannack again quite frequently. Wannack said if we got this information and it was the proper information we could go to any bank in this country and it would be cash on the barrel head. That was the words Mr. Wannack stated.

The Court: How much?

A. Three hundred thousand dollars.

Mr. Reichmann: How much?

A. Three hundred thousand dollars.

Mr. Von Holst: Q. Now what did you do after these first talks with Mr. Wannack and after this meeting with Mr. Dubbs?

A. Well after we came back to Port Arthur that night, in fact it was getting late in the morning, I expect it was pretty late, and so we made arrangements to get the information. And, understand, that we were informed that we weren't stealing anything, just more that they just wanted to bring out the truth. That is the way I understood it. That is the way it was told to me. I may have been misinformed. And then it went on for quite a while oh, probably about two or three weeks. And Mr. Beyt kind of decided that he
171 wouldn't stay in the picture no longer, and so he
222 decided to drop out of the picture, and he suggested Mr. White, G. B. White.

Q. Before you come to that, let me ask you. To your knowledge had Beyt taken any drawings out, pursuant to this plan?

A. No, sir, he had not.

Q. Now did you get any drawings out?

A. A party gave me a drawing on a jet pump. That drawing came from the machine shop. Mr. Wannack and I together had a photostatic copy made of it. When the photostatic copy was made, the original was given back to the party that gave it to me at the gate, taking it back to the shop, I suppose he did. Mr. Wannack gave me two hundred dollars for that drawing.
172 The drawing was a jet pump. It was a jet rather, there is no such thing as a jet pump. I don't remember the date of that drawing. It was not one of the old drawings. To the best of my recollection the drawing was dated in 1926.

I signed an affidavit for Mr. Wannack or for Mr. Dubbs. I do not have a copy of it. Mr. Wannack had the original affidavit.
173 I mentioned that Mr. Beyt wanted to drop out and that Mr. White's name came up. Either Beyt or I suggested White's name to Wannack. White was working in the laboratory at The Texas Company at that time. I think he was what would be called assistant to Mr. Behimer at that time.

223 Q. And going back for a moment do you know what Mr. Beyt's duties were at the time you first contacted him about this matter?

174 A. He was doing the clerical work in the office. He had charge of the files on all experimental work for Mr. Behimer on the cracking process. Now all this time, and when I got this drawing and gave it to Mr. Wannack I was in the employ of The Texas Company and drawing pay from The Texas Company. I was at the same time receiving pay from Mr. Wannack. I was getting about one hundred or two hundred dollars and expenses. And in addition to that I was paid this two hundred dollars for the drawing. I was paid seventy-five dollars when I made this affidavit.
175 The Texas Company fired me in the fall of 1926. It might have been earlier. It might have been later, I can't remember the date. While I was working for The Texas Company in 1926 and also doing this work for the Universal Oil Products Company, I got about six hundred dollars from the Universal Oil Products
176 Company. After I quit working for The Texas Company I still continued working for the Universal Oil Products Company until—well the only date I can give on that is when Lindbergh came back to this country.

about a week from then, that is about the time I went to New York.

Q. Now then you mentioned White. Will you take up the story from that point on after White got in the picture?

A. Well when Mr. White got in the picture, he agreed to do all we were supposed to do, get these run sheets, he was familiar with that. There was a
177 meeting with Mr. White, Mr. Wannack and myself. White kind of stalled around about it and said "Well, I can't get in the files." And Beyt said he didn't have nothing to do with it, he wouldn't furnish him with
224 any keys. So Wannack said well we will have some keys made, so then he had two sets made. Beyt or I or White, either one of the three of us, got the numbers of the file cabinets of The Texas Company where the run sheets were at. There were probably about ten of these file cabinets. These numbers were given to Wannack. He said if you get the num-
178 ber of the manufacturer's files I will have some keys made. After that, Wannack showed me a bunch of keys. He said he gave one bunch to Mr. White and he had another bunch. He said they were keys for the files. I understood that. He showed them to me. He expected to give one to Mr. White so he could get the run sheets out of the files.

I was driving an automobile the early part of 1927. That was a Mercer stock speedster. Mr. Wannack
179 bought it for me.

Wannack told me he got these keys that he showed me up East in New York. Said he went to Houston and caught a plane, taking a plane out and went to the manufacturer and he told me, he said he got one of the workmen to make the keys for him. He didn't go to the main office, so he said, he told me that he paid this workman five hundred dollars to have these keys made.

Q. Did Wannack ever tell you about anything that he had done in his search for records around Houston.

A. He told me he and a couple of men went to the main office in Houston.

Mr. Reichmann: It seems to me, if your Honor please, that is not competent. That is a narration of something this man was not involved in at all, it is a

narration of something that has nothing to do with this transaction.

181 Mr. Von Holst: The statements of one co-conspirator to another are competent.

182 225 The Court: If I admit to you that I stole something for my employer day before yesterday that is not evidence against my employer. Anything I am doing during the process of stealing is admissible.

Mr. Von Holst: Exactly, but if he is relating something he has done which is not related to the general scheme then I agree, but what we are seeking to get from this witness and from others is what Wannack admitted he had done in relation to the very subject matter.

The Court: No, I am against you.

Mr. Thiess: This was all one proceeding.

183 The Court: I know it was. You may make your offer of proof and make your record but I am against you on the general proposition. I am against the proposition that he can tell things that Wannack related to him as to what he had done prior to the meeting with these men.

Mr. Von Holst: The Court will allow an exception?

The Court: Yes.

Mr. Von Holst: I would like to ask a question under Equity Rule No. 46, to make my record.

Mr. Hall: You suggested that he could make his proof under Equity Rule 46, can he state his proof?

The Court: He can make an offer of proof.

Mr. Von Holst: The way it is done is to ask the question of the witness and let him answer under Rule 46.

The Court: You may make this offer of proof. You offer to prove, such and such.

Mr. Von Holst: I offer to prove by this witness that the man Otto Wannack told the witness Brunow that in the early part of 1926 he had gotten a couple of gunmen from Chicago and had gone down to The Texas Company's offices at Houston and had gotten up through the fire escape and through a window and he had ransacked The Texas Company's files for

184 226 the sake of finding out this information and getting the information, and they found nothing and left. They went through Manley's desk and Holmes' desk both.

The Court: That I hold inadmissible.

185 I know a man by the name of Kaufman. I met him in the first part of 1927 or the latter part of 1926. He said he was representing the Universal Oil. Mr. Wannack said he was too. He told me before he left that Mr. Kaufman was coming down to assist. Kaufman was the chemist of The Texas Company if I am not mistaken at one time. I knew him personally.

186 He was not working for The Texas Company in 1926.

187 I know a man named Stratford. He was a chemist. He was assisting the attorney representing The Texas Company at Port Arthur, mostly in the legal department. Wannack told me that he thought that Stratford was possessed of this here letter that we are after. He told me to see Stratford and he said

188 "You try to get that letter from him," and he said make him some offers on it. So he said, "You can go as high as forty thousand dollars." And so I started at ten thousand dollars and ended up at forty thousand dollars. The first time I saw Stratford, on that occasion we were riding in a car, I told him what we were

189 after, a letter. This letter was some concern to certain operations that had been performed on the cracking process at the laboratory and that was what he was after, was this letter. I asked Stratford about this letter. He was not so interested at first. I got to talking to him and after I made the offers to him—I offered him forty thousand dollars, ended up at forty thousand dollars. I offered that to Stratford in this conversa-

190 tion in the car. I think the conversation was in his car at that time. I met him again after that and he said he would think it over, so after I met him again he decided he had better not do that.

227 *Cross-Examination by Mr. Reichmann.*

190 Q. Mr. Brunow, you have told about this man Wannack wanting to get into the files of The Texas Company for the purpose of having photostats made of those files. Is that right?

A. Yes, sir.

Y. Wannack never asked you, either personally or to get somebody else, to go into the files of The Texas Company and abstract or steal those files, did he?

Mr. Von Holst: I object to that, your Honor.

Mr. Reichmann: It is cross-examination.

Mr. Von Holst: That's calling for a conclusion as to what is meant by stealing.

The Court: He is entitled to that on cross-examination.

The Witness: What was the question?

Mr. Reichmann: Q. I say Wannack did not ask you personally or to get somebody else to go into the files of The Texas Company and steal files, abstract them, did he?

191 A. No. He did not exactly say steal them but we would just borrow them to make a photostat copy of them.

Q. That's it?

A. Yes.

Q. In other words he told you that he wanted you either personally or through somebody else—

A. Yes, sir.

Q. —to get access to the files, bring the files out so they could be photostated and then put back into the file again?

191 228 A. Yes, sir.

Q. That's right?

A. Yes.

Q. Now, in your initial conversations with Wannack he undertook to tell you, did he not, what he was after, to find out just what the operations of Mr. Behimer had been in connection with this cracking process?

A. He was wanting a run sheet that dated back at a certain date.

Q. Yes.

A. On a certain operation.

Q. The Behimer run sheet?

A. The Behimer run sheet on the cracking process.

Q. And he told you, didn't he, that what he wanted was to establish the actual facts by getting access to those run sheets?

192 A. Yes, sir.

Q. He told you, didn't he, Mr. Brunow, that the Universal doubted very much the correctness of the dates disclosed by Mr. Behimer as to the date of his invention and that they wanted—

A. Whose invention?

Q. Behimer's invention, cracking invention. He told you that, didn't he?

A. What part of the cracking process?

Q. Concerning the Behimer cracking operation. Didn't he tell you they wanted to find out just the exact dates that the Behimer claimed—the manner in which Behimer did the work because they doubted the dates that he claimed?

192 229 A. Yes, sir, that's right.

Q. And all they wanted, he told you, didn't he, Mr. Brunow, all they wanted to do was to establish the truth and the facts?

A. That's all they wanted to establish, the facts.

Q. That's all they wanted?

A. Yes.

Q. Yes. And to that end he wanted you, and anyone else you could get to help, to get files, have photostatic copies made and then put back again.

A. Yes, sir, put the originals back.

193 Q. Put the originals back, yes.

A. And keep the photostatic copies.

Q. Yes. Now, that's the work you were engaged in?

A. Yes, sir.

I first contacted Beyt and I told him that Wannack wanted to establish the exact dates of certain of the Behimer operations disclosed by the files of The Texas Company. I asked Beyt whether he would not cooperate with me for this purpose. Beyt did the clerical work for Behimer. White was an assistant to Behimer but Beyt was familiar with the cracking process and the file.

194 Beyt had some conversation with me and Wannack concerning getting into the files and getting some of them out for photostating and returning them. He was uncertain for some time whether he wanted to do that or not and finally concluded that he did not. To my knowledge Beyt never took anything from the files.

195 230 I never took anything from the files myself and cannot say that White did. I do not know of anyone else taking anything from th files with the exception of a blueprint or drawing from the machine shop. After Beyt said that he did not want to have anything more to do with that matter, I contacted White. This

may have been during the latter part of 1925 or sometime in 1926.

196 White was an assistant to Behimer and directed some of the operations of the cracking process on the experimental work. I thought that he might be useful in getting access to the files and upon discussing the matter with him, found him agreeable to the proposition. My contact with White in this matter lasted
197 about four or five months, during which time he was in repeated conferences with me and Wannack, trying to devise ways and means of getting into the files and promising that he would ultimately do so.

Q. Later on he did deliver some papers and blue prints, or something of that kind to you?

A. No, sir. He did not deliver it to me.

Q. Who did he deliver it to?

A. To Wannack.

Q. To Wannack personally?

A. He was supposed to deliver it to him but we found out it was a fake.

Q. I will come to that, but did he deliver those papers to you and Wannack both or to Wannack?

A. He delivered them to Wannack if there were any papers delivered. I say if there was any papers delivered he delivered them to Wannack.

231 Q. Did you see him deliver some papers to Wannack?

A. It might have been a bundle of papers, you could not tell what was in it until you opened it up.

198 I gained the impression by talking to Wannack that he had had them photostated. I don't know whether or not the papers were returned to White and whether or not he put them back in the files. I don't remember whether White ever told me or not. White had been collaborating with me and Wannack for about six weeks before he got this file which he turned over to Wannack for photographing purposes.

200 To the best of my recollection the matter of getting these keys was taken up from three weeks to a month after my first contact with White. That key matter came before we got the papers. I don't know whether White got the numbers of the locks of the file cabinets for Wannack so that duplicate keys could be made. I did not get the numbers myself and I can not swear
201 that Beyt got the numbers. It lay between the three of

us. White said he would get the numbers and I understood he did get the numbers. I heard of it and later Wannack showed the keys to me. He kept one set
232 and gave the other to White. They were supposed to be the keys that would get into the cabinets where the files or records were supposed to be.

202 I subsequently learned that White had been playing along with me and acting in the nature of a spy for The Texas Company. Wannack got this information. I didn't charge White with having double-crossed me and I never took the matter up with him.

203 Wannack told me that White had been double-crossing me about five or six months after I had first contacted him and he had agreed to work with me. This was about the latter part of 1926.

When I first met Kaufman he was not in the employ of The Texas Company. I understood he was in the employ of the Universal Oil but had been in the employ of The Texas Company.

204 When Wannack first approached me, I wanted to be certain that he really represented Universal Oil and in consequence he told me that he would satisfy me about that. He arranged for a conference with C. P. Dubbs whom I met at the Beaumont Hotel about a month after I had first talked to Wannack. Wannack, myself, Beyt and Dubbs were present at this conference which lasted about three hours. This was the only conference I had when Dubbs was present.

205 I cannot recall whether I met Dubbs in Galveston. The last time I talked with him was over the telephone in the latter part of 1926. During the conference at the Beaumont Hotel Dubbs told me about this interference pending between The Texas Company and
233 the Universal Oil Products Company in the patent office, and said that he had ten attorneys in Washington searching the patent files.

206 Dubbs said it was his idea of back-trapping on the gravity system; in other words, he had his tower higher up than his cracking coils. I understand that The Texas Company claimed they had a jet to force it back from the separating tower to the tubes again.

Q. Well, now he told you, didn't he, Mr. Brunow, that what they wanted to learn was the absolute truth and fact about this matter?

A. He said he would spend his last dollar if he thought it was his, to get it.

Q. To get the truth, that's right, isn't it?

A. That's right.

207 During this conversation Beyt said something about getting some files or records that would show what The Texas Company thought Behimer had been doing. I do not recollect that Dubbs told us in that conversation that he did not care for the files, and that he wanted a statement of witnesses who knew exactly what had taken place. He did not put it that way. He did say that he thought The Texas Company was trying to hide something from him.

Naturally The Texas Company claimed they had a certain run sheet there at a certain time that they claimed back, that they used that method.

208 So I understand that the Universal, that is, Mr. Dubbs claimed that he had a certain operation under this same system only his was with a gravity feed.

234 And The Texas Company claimed with a jet. And so naturally if they ever had a run sheet of it that's as far back as they could claim for their patents.

Q. But didn't he tell Beyt and you gentlemen there that he was not interested in getting any files, that what he wanted was the testimony of witnesses who knew the exact facts?

A. He said he wanted the truth.

235 Q. He wanted the truth?

A. Yes.

Q. Yes.

A. Anyway if we could have gotten run sheets it would have been perfectly all right. That's the way I understand.

Q. Didn't he tell you that he was not interested in getting any files, that what he wanted was the statement of witnesses who knew of their own personal knowledge just what had taken place?

A. I don't remember that.

Q. You don't?

A. No.

Q. You won't say he did not say that?

209 A. I won't say that he didn't or did.

Q. In that conversation at that time with Mr. Dubbs didn't Mr. Beyt say that he was inclined to think from

his information that The Texas Company was trying to put something over on Universal?

A. I understand it that way, yes.

Q. Well, that's what he said, wasn't it?

A. I would not say he said that at all.

Q. What did he say in that respect and from which you understood it?

A. Well, that was the general subject of conversation that it seemed if The Texas Company had anything, if they were not scared of something,—a thief does not want to be searched, an honest man does.

Q. Yes.

A. So that if they was trying to hide something that was not the truth why it would not hurt nobody.

Q. Didn't he say also as part of that conversa-
236 tion that it looked to him as though The Texas Company was trying to put something over on the Universal?

A. Yes. That was a part of the conversation?

Q. Yes.

A. That's what it was.

211 I do not recall the date that Wannack gave me an automobile. It was in Beaumont at the Beaumont Hotel while the work was going on. He got it from one of the company detectives. It was a second hand Mercer which had cost five thousand dollars. There was something the matter with it and after having some
212 mechanic work on it the man got disgusted and sold it for $100. I finally sold it.

213 237 *Redirect Examination by Mr. von Holst.*

I identify my signature on the affidavit (DX 212) that I referred to that I made for Mr. Wannack and for which I was paid $75.00. I suppose Mr. Wannack prepared that affidavit.

214 I identify a letter (DX 213) dated October 23rd, 1926, from Los Angeles, California, Hotel Clark, addressed to "Dear Henry" and ending "Kindest regards to you" with no signature. That came to me through the mail. It was addressed to me. It has been at my house, at Port Arthur, since I received it.

215 I also identify a letter (DX 214) written from the Rice Hotel, Houston, Texas, not dated, and beginning

"My Dear Friend Harry" in longhand. That letter has been at home too. I received it the latter part of
216 '26. That letter came from Otto Wannack.

Otto Wannack personally gave me a list containing 21 names in about the middle part or the first part of '26. He told me to get in touch with all of these fellows, to get affidavits from them.

217 238 I know these people mentioned in this list (DX 215). I knew practically all of them personally.
218 Wannack gave it to me in Port Arthur. Practically every one of the names on this list were Texas Company employes employed at that time.

220 I mentioned on cross-examination I had a telephone call from Mr. Dubbs. To make it pretty close within a day or so, that was whatever date that Lindbergh got back to this country, because we were in New York when Lindbergh got back to this country. I called Mr. Dubbs about the day before we started from Houston. I called for Mr. Dubbs personally, what I was instructed to do. I figured it was Mr. Dubbs according to his voice. I would not be positive but I thought
239 I recognized his voice. I told him The Texas Company wanted me to go to New York, and so he said, "Well, that is all right, go ahead and find out all you can."

221 During the time that I knew him, Wannack did use another name. I just don't remember the name, just what other name he did go by but I know he did because my wife got a check from him when he was in Los Angeles, and she cashed it and it was not in Wannack's name; signed another name.

I continued receiving pay from Universal until just about the time that Mr. Behimer was hired by Dubbs, that was the last. In all, I received monthly remittances for about eight months. They ran from $100.00 to $200.00 expenses per month on those regular remittances, if I had to have a service car or anything that I had.

222 There were no further telephone conversations with Dubbs. I came to call Dubbs that time through Wannack. He did not ask me then but he told me if I had any business of any kind, why to get in touch with Mr. Dubbs personally.

240 *Recross Examination by Mr. Reichmann.*

223 Although I cannot say who prepared this affidavit that I signed, Wannack presented it to me and asked me to sign and swear to it. This affidavit was true as I signed and swore to it to the best of my knowledge.

224 I told of receiving pay for about seven months, i. e., I was supposed to receive it for seven months but it was running delinquent about a month and a half. Wannack always paid me. I never received money from Universal direct, by check or otherwise.

The telephone conversation referred to on redirect examination was not on the date that Lindbergh arrived but was two or three days before. We had been in New York about two days when Lindbergh arrived.

225 I called Dubbs the day before and left for New York. The telephone call was made from Houston to Chicago, not from New York.

226 241 H. A. WARD, Houston, Texas:

Direct Examination by Mr. von Holst.

I am sales engineer for Anchor Packing Company and have been for fifteen years, approximately. I worked for The Texas Company from May 1923 until February 1924. I worked in the Fuel Department within the plant of The Texas Company at Port Arthur, Texas.

227 I know Otto Wannack. I first met him early in June 1926 in the office of the Witherup Packing Company, Beaumont, Texas. I next met Wannack at the Rice Hotel, in Houston.

I had an acquaintance that I knew when I was employed by The Texas Company at Port Arthur, and in the meantime he had secured a position with the Humble Oil & Refining Company, and at this particular time I was at Baytown, Texas, attending to some business for the Anchor Packing Company, and I met Gray. Gray asked me if I would go with him to Houston as he wanted to see a man that was interested in his patent. He had a patented valve. Anyhow, Gray took me to see Wannack. Myself, Gray and Wannack

228 were there. At this particular time Wannack did not make any inquiry of me as to any employe of The Texas Company whom I might see. I think that hap-
229 pened the next time I met him. I was with Gray. It was the latter part of June 1926. Wannack asked me if I knew anyone that was familiar with the high pressure still, cracking still, and I told him yes, I knew several men. And he said, "I wish you would get in touch with one of your friends," he said, "I need a man of that sort." So consequently I contacted Mr. White and told him the story that Wannack had told me.

242 I next saw Wannack a few days later. He wanted me to make arrangements to make an appointment
230 with White to talk to him. He wanted to give him a position to better himself—he asked me if I thought he would take it, and I said, yes, most any man would try to better his position. Subsequent to that there was a meeting between myself and George White and Wannack that was supposed to be in the Beaumont Hotel, but Wannack did not show up then at the time that he was supposed to show up. Later on he called me on the 'phone and told me he would meet us at the Crosby Hotel, which is a few blocks from the Beaumont. And we went to the Crosby Hotel and Wannack was not there. We started back to the Beaumont Hotel again and met Wannack on the street. Then I think we proceeded to the Crosby Hotel and had this meeting. I am not sure whether we went to the Beaumont or the Crosby. Wannack told White that he wanted to get some drawings of the jet used in the
231 cracking process of The Texas Company, and in the Holmes Manley Still. He told him it might be worth $100,000, might be worth $50,000, and it might only be worth $5,000.

The next meeting with Wannack and White was along the Interurban tracks. Wannack told me to drive out the South Park, that is a Suburb of Beaumont, and meet him along the Interurban tracks. So White and I drove out there. Wannack came out on the car, on the Interurban car and got off the car and came over to our automobile and asked me to drive off the main road to a secluded spot, that he wanted to talk to us and did not want anyone to hear our conversation. That was late in the evening, possibly

232 after seven o'clock. Wannack repeated that same story he did in the previous conversation.

Q. Did Wannack tell you about any contacts with any other Texas Company employes that he had made at that time?

243 A. Yes. He said he had contacted Mr. Beyt and Mr.—

Mr. Reichmann: We object to it as incompetent, irrelevant and immaterial.

Mr. Haight: That comes within your Honor's previous ruling.

The Court: Yes. I sustain the objection.

Q. When was your next meeting with Mr. Wannack?

I think the next meeting was in Houston a few days
233 later. We met in the McAtee Hotel. Mr. Wannack went under the name of Cal Smith at that time. He was not registered as Otto Wannack. At this meeting White was present. Wannack told White that he wanted to get some drawings of experiment 8, 11-B,
234 I think, and 18. He also wanted the report that Mr. McKenzie and another name I can't recall just at this time, wanted that report that they had made to Mr. Holmes on the runs of these particular stills.

I recall a further meeting with Wannack and White in my car at Port Arthur. Wannack showed White a blue print and he asked me to turn on the light. I turned on the light in the car and saw this print. I saw the print, but I don't remember what was on it, but I remember seeing The Texas Company's name on the print.

Mr. Von Holst: Now, your Honor, I make the same offer of proof with regard to this witness that I did
235 with respect to the testimony of Brunow, that Wannack told this witness about the Houston episode. I take it I don't need to go through it word for word again?

The Court: No.

244 Mr. Von Holst: I incorporate it by reference.

We offer to prove by this witness that Mr. Wannack told this witness in Mr. White's presence about the Houston episode and the breaking into The Texas Company's offices.

Wannack showed the print to White. Wannack had
236 it with him. He said Beyt gave him the print. He

took it out of his brief case and showed it to White. At this meeting Wannack asked White to go into The Texas Company's files and office at the Port Arthur works of The Texas Company and secure him some information. What he really wanted was the drawing of the jet pump, he had some drawings before that, but they weren't originals; he wanted to get the original drawing with C. J. Witherup's name on it. He told White that he wanted George White to get the numbers off these cabinets so he could go to Jamestown, New York, and get these keys made for them.
237 White says, "O. K., I will fix it up for you." This is all June or July 1926, because we left the first of August on a vacation. Wannack said White was to go in the plant on a Saturday afternoon or Saturday night or Sunday and get these plans from the files, bring them out to me, and I should turn them over to a
238 photographer, a man by the name of Reeves, and have them photostated. He said to us "If this is what I want I will mail this photostat to Chicago," and I says, "What will I do with the original?" "You can keep the plates and photostat, one of them, get two or three made." That would remain in our possession until he paid us for what it was worth.

Mr. Reichmann: He hasn't said yet what he was to do with the original.

A. Well, I know that the original never did—it wasn't the original he thought it was and it was never returned to The Texas Company. I don't know what became of it.

245 Mr. Hall: Q. What did he say he wanted done with it?

A. He didn't say what he wanted done with it.

With reference to the keys, Wannack said he wanted White to see Mr. Beyt and get the numbers, if he couldn't get them himself. So that is what he was supposed to do.

239 I had a meeting with Wannack when Mr. Brunow was present. It was at the Beaumont Hotel either in June or July. Well I went in Wannack's room about ten o'clock, and Brunow was there. So we talked things over for a white, talked business, I don't remember just what it was anymore. Finally in about an hour George White came in, and when George White came in the room Brunow handed him

a piece of paper with the numbers of the keys on it. White opened his notebook, put the numbers of these keys down and handed the paper back to Brunow, and Brunow in turn gave it to Wannack. In a previous talk, Wannack said if Beyt could get these keys, he would give him $500. That same meeting Wannack seemed to be surprised to see White and he asked him what he was doing there. He said he came up
240 to get those affidavits that he wanted to have Beyt sign. I know that Wannack secured keys because I saw them. Either this same day or the day after, Wannack left for New York. He told me he was going to Jamestown, New York. I know he went there because I heard from him afterwards.

I saw him after he came back from New York. I met him at the train and drove him to Port Arthur,
241 and we took the keys to Port Arthur, and George White met us at a place called Sunny Slope. Wannack handed the keys to White and told him, "Now go to it." He got in on the 5:25 train, so it must have been about seven o'clock when we got to Port Arthur.

246 Wannack told White he had the keys for only one purpose, of going into those files of The Texas Company to extract the blue print that he desired.
242 White took the keys and gave them to Beyt, I think. I wouldn't know about that. Two or three days after I saw White get the keys, I met him at Port Arthur and we went to Beaumont. White had a drawing of some sort with him. When we got to Beaumont, we drove up the street and parked. He gave me this drawing and I took it over to a photographer, named Reeves. I waited in the car until he could finish the photostating of this drawing. He told me to come back about two-thirty, so I went back at two-thirty and he said they wouldn't be ready until five o'clock the
243 next evening, so I didn't go back anymore, but I phoned him from the hotel, and he said, "Don't come up here, my place is being watched; I have already mailed this drawing, this photostat, also the drawing to Otto Wannack at Beaumont." And Wannack says, "I will get that." So he didn't have any luck. He said, "I went in to get this, a couple of fellows with me, and there were several detectives around, and I couldn't do what I wanted to do, so I goes out and buys a girl a box of candy, and while I was talking to her I told

her to send this mail to Chicago to M. Egler, Chicago, Illinois.". He said M. Egler was Mr. Dubbs' secretary.

I have seen lots of money in Mr. Wannack's pos-
244 session. I have seen him in his room open a package with money in it, and I remember one particular occasion he had about sixteen hundred dollars in bills. He says "$1200 of this belongs to me," he said "I have given Charlie Witherup $1200 out of my own pocket to pay off a mortgage on his home, and" he says, "This is mine."

247 Charlie Witherup was formerly a master mechanic for The Texas Company, but he is in business for himself selling packing. He went in the packing line when he left The Texas Company.

245 Wannack took this money out of an envelope—there was a package like. I saw the name on the envelope. It was M. Egler to Cal Smith. The M. Egler name was up in the corner of the envelope. There might have been an address under it. I can't remember. It was Chicago, but I couldn't tell you the street ad-
246 dress. It was a Chicago address underneath M. Egler. The envelope was addressed to Cal Smith, Box 303,
247 Beaumont, Texas. Wannack said, "I always receive my money in bills." From Chicago. "It is always signed M. Egler. That is where I get my money; that is who I deal with." He said that with reference to this particular package.

After this episode that I have testified to when we went down to Beaumont and got these drawings photographed, I shortly thereafter had a talk with The Texas Company officials and told them all about it. I then signed the statement (DX 201).

248 Just before coming up here to testify, I received a telephone call long distance from Washington. I didn't
249 know at the time who was calling me. The caller asked me if this was Mr. Ward. He asked me if I was going to testify in the case for the Globe Oil & Refining Company, and he also told me that The Texas Company and the Universal Oil Company were friendly now, but they were enemies at one time.

I had a conversation later on which enabled me to identify who called me. That was Monday morning of this week. I then saw Mr. Seguy. I now see
248 him in the court room, the gentleman sitting there with the black hair (indicating). Mr. Thomas

250 was also there when I saw Mr. Seguy. I asked Mr. Seguy if he was the gentleman who called me up from Washington. He said yes. Mr. Thomas said something about the relationship between the Universal and Texas Company when I was talking with him and Mr. Seguy, but I don't remember just what it was.

249 *Cross-Examination by Mr. Thomas.*

248 I first met Wannack about June, 1926. I had been
250 with The Texas Company from May, 1923, until some time in February, 1924, so that at the time I contacted Wannack I was no longer in the employ of The Texas Company. I was and still am very friendly with The Texas Company and was then engaged in doing a great deal of business with them. In this affidavit in September, 1926, I told The Texas Company of all that had taken place.

252 At the time Wannack contacted me and after he had talked to White in my presence I did not then decide to enter his employment with the idea of eliciting the information to transfer to The Texas Company. I just got tired of playing along with Wannack so went to The Texas Company and told them the whole thing. They were my friends and he was a stranger to me. I made up my mind to go to The Texas Company after I got fed up with him.

I had no personal information concerning the opera-
253 tion of these high pressure stills prior to 1924. That was not my work at all. In the course of one of these first conversations with Wannack he told me he wanted to get some information concerning the operation of the high pressure stills. He told me he wanted a drawing or blue-print of the jet pump because it was an infringement of the Dubbs patent. He also wanted to get information on this experiment 8, and also
253 250 11-B and 18. I understood they included a jet pump.

254 Q. Now, at that time didn't he tell you that he only wanted the actual facts concerning the operation of this experiment 8 and 18?

A. He wanted to get anything that he could get that he thought would be of benefit to him.

Q. And anything that was representative of the actual facts; isn't that correct?

A. He had to have the facts, yes.

Q. He didn't want you to get any information that would not be truthful, that would not be proper information?

A. He did not ask me to get that information.

Q. But he said he wanted just the actual facts concerning those operations that you have identified?

A. Yes.

255 He asked me if I knew a man that knew all about the stills and I mentioned George White. I also arranged a conference between him and White.

I never met C. P. Dubbs during my career with Wannack, nor did I meet anybody purporting to represent Universal Oil Products Company except Wannack, although I talked with several over the telephone. I recall talking with Olsen but never met him.

256 Q. Now, during this conversation in which Mr. White and you participated, didn't Wannack then tell Mr. White that all he was concerned with was obtaining the actual facts insofar as the operation of this plant 8 and 18 was concerned?

256 251 A. He did not use that language. He said, "What I want is a copy of the blueprint of this jet pump and these runs, and the report of the runs." He did not say anything about the facts.

Q. He wanted the actual data, that is the run record and the correct blue print of the apparatus?

A. That is it. That is what he wanted. He did not care how he obtained it.

Q. Now Mr. White said that he could get that information, did he not?

A. Yes.

Q. And after considerable delay why he said he could not get it; isn't that correct?

A. Correct.

257 The first record that I knew that White got from the files of The Texas Company is that drawing that White gave me in the car one evening after we got to Beaumont. I took it over to the photographer. I subsequently learned that it was a phoney drawing, having received a message to that effect from Otto Wannack in Chicago.

258 Wannack did not say anything about returning the originals of the drawings to the files of The Texas Company. Wannack said he wanted to get photostats and he told White and me to keep the plates and one photostat. The understanding was that I was to
259 252 deliver the original drawings and remain around where the photographer was until the photostats were made. Wannack did not mention returning the originals to me or to anyone else. I gave the original to the photographer in connection with this one case where photostats were made and never saw it again.

Q. Now I asked you a little earlier in your examination whether or not when you first contacted with Wannack, that you took this employment or association with him with the idea or intention that you would elicit such information as you got from him and turn
260 it over to The Texas Company. And I understood you to say no. Is that yor testimony?

A. That is correct.

Q. Now, in this affidavit that you made for The Texas Company—

A. Yes.

Q. —on September 18, 1926—

A. Yes.

Q. —which you identified, I find you saying this: "He said, 'Ward, you will think of me using you as a good thing but I am not'." He put that same phrase to me that he put to White in the afternoon and all of the time he was talking I sat there thinking and thought, 'I will let you go as far as you like and see what I can get out of you and turn this over to the Texas Company.' I thought that over in my mind as he did the talking."

A. Yes.

Q. You made that statement, "I did not tell him what was in my mind but led him to believe that I was cooperating with him"?

260 253 A. That is correct.

Q. You made that statement in your affidavit?

A. Surely.

261 I had always been loyal to The Texas Company and as early as September, 1926, I went to The Texas Com-

pany voluntarily and made this affidavit giving my story of the transaction.

262 Q. Now, just to get this clear. You are quite certain that you were not instructed by Wannack, or White was not instructed by Wannack that after the photostatic copies were made, the originals were to be returned to White or to the files of The Texas Company?

A. No, I cannot say that. What he told us, we were to retain the plate and the photostat, there was nothing mentioned about the original drawings so far as I was concerned.

Q. All right. Now in this same affidavit that you made for The Texas Company in September, 1926, didn't you say this: "It was outlined that White should go through The Texas files before and after working hours and get the desired information which was to be delivered to me at the Post Office at Port Arthur, and I was to take this information to Reeves, the photographer, in the Weiss Building and have it photographed, and I was to return the original information to White and White and myself were to keep all photographs, plates, etc., in our possession? Didn't you so represent in 1926?

A. If it is in there I must have said it, but I don't

263 remember.

263 254 Q. So then you can see that your memory must have failed you when you said—

A. On that particular one thing about that original drawing, I told you about the plates, but that slipped my memory, that has been twelve years ago. What I want to do is to tell what I remember and tell the truth, and that is all I can do.

Q. All right. Now I am referring now to these originals or these early conferences you had with Wannack and White, and where the plans were laid you say to obtain these records that Wannack wanted. Now you recall, do you not, that White was to get this data from the files of The Texas Company; that is correct, isn't it?

A. Yes.

Q. And he later said he could not get that information; that is correct, isn't it?

A. Yes.

Q. Now, in connection with that information he

was to obtain pursuant to this understanding with Wannack, wasn't it then and there arranged that when the photostats were made of the originals the originals were to be returned to White who was the employe of The Texas Company?

A. I just explained to you that was not clear to me, that I cannot remember that, it has been so long ago. You just ask me the same question over and over again.

Q. Now, having read to you what you said in your affidavit and having just refreshed your recollection, isn't that the fact, wasn't that the arrangement?

264 255 A. I told you before, if it is in there I must have said it, but I don't remember.

Q. If you said it, it was true, wasn't it, in 1926, if you made that statement in your affidavit in September, 1926, of course it was true, wasn't it?

A. If it is in there it is, yes.

Q. I read you what was there and you understood it is there, didn't you?

A. I have not seen it yet.

Mr. Haight: Show him his signature.

A. Yes, it is in there.

Mr. Thomas: And that is your affidavit, that bears your signature?

A. Yes.

Q. And the statement you just read was true when you made it, isn't that correct?

265 A. Yes.

When White reported to Wannack that he could not get the information from the files it was then suggested that certain keys be obtained to open certain files of The Texas Company where this information was contained. Wannack said he wanted to get this information and that the only way he knew whereby he could get it was to have keys made for the filing cabinet. He told White to get the numbers of the filing cabinets so

266 that keys could be made. I thought White got the numbers but it was Brunow who handed the numbers

267 to White who put them in his notebook. These numbers were turned over to Wannack by Brunow.

268 I do not remember the exact date when I first

256 ascertained that White was reporting to The Texas Company all of his transactions with Wannack and me, but a lady friend of Wannack, named Mrs. Welton,

told me that Wannack told her that White was double-crossing him. I think that must have been in September.

269 Q. Now as the result of all this work in which you participated, there never was but one document that you knew of that was removed from the files of The Texas Company and photostated and a photostat sent to Wannack; isn't that correct?

A. I saw that one, and previous to that I saw a drawing.

Q. You don't know anything about the original of that; you just saw a drawing of that?

A. Wannack had it in his possession.

Q. That is right.

The Court: This witness has testified to only one drawing so I am assuming there were no others. I am assuming there is no proof that he knows about any others.

270 In this same affidavit I stated that Reeves finished his work about 2:30 A. M. and that I stayed there until 271 he gave me the original information that I had gotten from White. I carried these drawings to the photographer in order that photostats might be made but did not stay until the originals from which these photostats were made were returned to me. I stayed in White's car and went back for the originals and I did not get them. I do not know where they are to this day. He mailed the photostat to Wannack at the Beaumont postoffice.

274 I said in my affidavit that I stayed at the 275 257. photographers until the original information was handed back to me and to the best of my knowledge and belief this affidavit was true when I made it.

The Court: Just one question I would like to ask of this witness. You said it was your intention to go along with Mr. Wannack until you got fed up on him. What did you mean by getting fed up on him?

A. You know, well that is a little bad English.

Q. What do you want us to understand by that?

A. Well, he was misrepresenting to me all the time, misrepresenting himself, and finally he came out and told me what he wanted.

Q. How did he misrepresent himself?

A. He said he was not—he was a patent man, he

had an interest in different patents out on the Pacific Coast. The reason he wanted to get this fellow Gray's patent is the reason he wanted George White to work for him,

276 Q. When did you find out these representations were not true?

A. Oh, I guess it was about 30 or 45 days after I first met him.

Mr. Von Holst: When did you first make your disclosure to The Texas Company of all these matters?

A. September 1926.

279 258 G. D. WHITE, 1436 North Maryland Street, Tulsa, Oklahoma:

Direct Examination by Mr. von Holst.

I worked for The Texas Company, starting in September 1917 until December 1934. I first started to work for The Texas Company as a bricklayer, a journeyman bricklayer was my first service, and after I worked some five or six weeks I was laid off, and

280 later returned in November and went back as a journeyman bricklayer, and then worked as a subforeman in various brick work throughout The Texas Company's refineries. At the beginning of the year 1926 I was in the fuel and power department.

I did not have any work with Otto Behimer directly, but did indirectly. If for instance he was doing experimental work or needed my advice or I could be of assistance to him, why, I worked in connection with him. While I was at The Texas Company and throughout the year 1926 I did considerable work with Mr. Behimer. Before I went with The Texas Company I was employed by the Gulf Refining Company. My initial work with them was journeyman bricklayer, and then later as a sub-bricklayer foreman. Then, at the close upon leaving the company I was in the ex-

281 perimental department in the aluminum chloride process working under and with Dr. A. M. McAfee.

At the start of my work with Behimer, I was, you might say, his assistant. Behimer was experimenting on high pressure still cracking. I met Mr. Otto

Wannack through a friend of mine, Mr. H. A. Ward,
on or about the 22nd day of June, 1926. On or
259 about June 17th Mr. H. A. Ward visited The
282 Texas Company's refinery, he usually visited the west side office where I was located, and approached me on the matter of changing positions and asked me would I be interested in meeting a party that was representing a large and major oil company, and I stated that I would. Four or five days later Mr. H. A. Ward got in touch with me on my phone and then later saw me in person and directed me to meet with him in Beaumont, Texas. First, we were supposed to meet in the Hotel Beaumont, to meet Mr. Otto Wannack, and upon arriving in Beaumont I met with Mr. Ward at the Hotel Beaumont, and from there he escorted me over to the Crosby Hotel where Mr. Wannack had obtained another room there. Mr. Ward, Mr. Wannack and myself were present at that first meeting. Mr. Wannack point blank came out and
283 told me who he was, that his name was Otto Wannack and he was representing Universal Oil Products Company of Chicago, Illinois, and stated certain information he wanted with reference to cracking, the cracking process. He stated that he would like to have information of Mr. Otto Behimer's early work on cracking, for instance using jet pumps and returning the back trap through a preheating coil. He mentioned Mr. Dubbs' name at that time. He mentioned at this particular meeting, I believe, that he had several men already in The Texas Company employ furnishing information for him from The Texas Company's files but it was not satisfactory.

I remember the names he gave me of those that were working for him. He mentioned two in particular, that is, M. S. Beyt and G. H. Brunow. Maurice
284 S. Beyt was Mr. Otto Behimer's secretary, or assistant in charge of and taking care of the operating and running reports. G. H. Brunow was a machinist,
formerly working in the research laboratory.
260 Wannack asked me would I be in a position to change jobs and would I be glad to accept a position with his company. I told him I would if it was fair. I asked him what the position was and he stated he would like for me to go to work for the Universal Oil Products Company and I would receive some six

or seven hundred dollars per month, and if I cooperated with him in securing the desired information that he wanted that it would be worth while for me. He did not say at that time whether or not he expected me to continue working with The Texas Company.

285 Following that first meeting with Mr. Wannack, I drove back to Port Arthur, Texas, twenty miles away. And knowing that the proposition was not right, I thought that he was going to use unfair means to obtain information from The Texas Company which he had no right to, the following day I reported the matter to Mr. Otto Behimer and Mr. H. A. Fouts. Mr. Fouts was area supervisor of the west side who had charge of the pressure still operations at that particular time. They stated that they had no power to act but knew that there would be something done about it. Then, the following day I went to my next immediate superior, Mr. T. B. Dellinger, assistant superintendent, and reported the matter to him. He

286 first called Mr. F. T. Manley in the Houston office and made arrangements for a visit over there so I could explain the matter to him and what was taking place, or what I reported to him, and he said the following day to follow it up and see what Mr. Wannack had to offer and see how far he had gone and how many men that were in the employ of The Texas Company he had connected with, and find out how much information had been obtained, and then I proceeded to follow it up as ordered.

Some two or three days later Mr. Ward had made an appointment with Wannack, but due to rain

261 coming upon that particular evening, a storm, I did not meet him at that particular meeting but did the following day in Beaumont, Texas, just on the outskirts of the city. I drove over in my own car. And I met Mr. Ward at the Hotel Beaumont and in turn we each drove out in our own car, out to what is called Park Drive, Park Place. We waited until Mr. Otto Wannack came out in a taxicab. I did not know

287 what the secrecy was about until he advised me that detectives were following him and he done that to throw them off his track. We then got in Mr. Ward's car and drove some quarter of a mile distance away from my car and sat and conversed. After I got into Mr. Ward's car Mr. Wannack related again the

information that he wanted from The Texas Company's files, of Mr. Otto Behimer's early work on jet pump experiments, experiment 8, experiment 11-B and battery No. 1, and experiment 18. All these experiments related to back trapping of condensate either from an aerial condenser or a reflux exchanger to a pre-heating coil. He explained why and how we should handle the matter, that is, I and Mr. H. A. Ward were to cooperate and work together. I was to try and obtain this information, and in turn I was to turn it over to Mr. H. A. Ward for delivery to him in Beau-
288 mont, and in turn he was to take it to Mr. Reed, a photographer in the Weiss Building on Pearl Street. And in turn the photographs, or all the original information was to be returned back to us for safe-keeping to be put in a safety deposit box or a lock box. He went on to state and relate that in doing this the information might be worth fifty thousand dollars, and might be worth one hundred thousand dollars or it might not be worth five thousand dollars.

I was to get this money. Evidently I was to split with Mr. Ward; however, there was not anything mentioned about it.

262 I was to get the money when he obtained the desired information. He said Mr. C. P. Dubbs of the Universal Oil Products Company was to give it to me.

After this first meeting with Mr. Wannack, I made a written report of what had transpired, and there-
289 after during this Wannack episode I continued to make daily reports immediately afterwards or as soon as possible when I had the time available, to my superiors.

290 At this second meeting with Mr. Wannack, he
291 said that he would like for me to meet Mr. C. P. Dubbs and that he would arrange for me either to meet him in New Orleans or to make a trip, to come to Chicago and meet him, and he would like me to meet Mr. Dubbs and all the officials of the company, to show what fine people he was connected with, fine place, and wanted me to visit the office and also out at the experimental plant to show me what a nice laboratory they had. He offered me a position, as I remember, at six or seven hundred dollars per month. At The Texas Company at that time I was

making approximately two hundred and seventy-five dollars.

I recall a further meeting with Mr. Wannack shortly afterwards near my home in Port Arthur, Texas, 1611
292 Fifth Street. I was sitting in Mr. Ward's car. Mr. H. A. Ward and Wannack were there. Mr. Wannack at that time showed me a photograph of a blue print. This was at night-time-dark. I asked Mr. Ward to turn the ceiling light on in the car, and he could not so he turned the dash light on and I held the drawing down to get the glare of the dash light on it.

The drawing was a reproduction of a jet pump, an assembly drawing of a jet pump. It was a drawing of The Texas Company. It had The Texas Company's emblem on it. I cannot offhand remember the date of it. I believe I made a report to that effect, though, to the company, of the date.

293 263 I remember a meeting, with Mr. Otto Wannack, H. A. Ward, and myself present, in Port Arthur at the City Slip. Wannack stated that Mr. Beyt had promised to either get him the keys to Mr. Otto Behimer's file or he would give him the keys so he could have copies made from them, a set of keys made. He was to secure the keys; he was to turn the keys over to me for ransacking The Texas Company's experimental files and securing the information that he wanted.

I was to do this job of ransacking at night or the
294 week end. He suggested the first of July, and he suggested the week end of the Fourth of July. That would give me some two or three days to do the job.

Mr. Von Holst: I will cut this short, your Honor. I make the same offer of proof with respect to this witness that I did with respect to the witness Brunow as to the Houston episode, that Mr. Wannack then told this witness that he had taken some men from Chicago and gone down to Houston and broken into the offices of The Texas Company there in an effort to locate these documents that he wanted. That was disclosed to him at this time.

The Court: I am assuming there is an objection.

Mr. Hall: Yes, sir.

295 The Court: Objection sustained.

I later met Mr. Wannack in Houston. Mr. Wannack was returning from Port Arthur and going from

Beaumont to Houston as well as I remember. He called on the long distance from Nome, Texas, and asked me would I meet him in Houston the week end, and I told him I did not know but I would find out and make an effort to meet with him. I reported
264 the matter back to my superior, and then made arrangements to go to Houston to visit with Mr. Wannack and find out what he wanted.

I came in on the Southern Pacific train, and he met me at the Grand Central Depot, and from there we went to the McAtee Hotel. At first just Mr. Wannack and myself were present, and then later he invited Mr. H. A. Ward up, and the three of us were present for quite some time. I remember him asking for this
296 information again naming these various experiments that he wanted, the information on these experiments that he desired.

Q. Did you at the time make a note on your report of the documents which Wannack wanted?

A. Yes, I did.

Q. And, refreshing your recollection—

Mr. Hall: I object to that. There is no foundation laid for refreshing.

The Court: Oh no. Let him enumerate the documents.

Mr. Von Holst: Q. Can you enumerate those documents without refreshing your recollection?

I might a part of them. Run reports, operating sheets on experiment 11-B, on experiment 18 and on experiment 8, on Mr. Behimer's early work and the shetup or general assembly drawing of the jet pump and its operation where the jet pump was used for the purpose of back trapping condensate to a preheating coil, and also with reference to one letter writ-
297 ten by Mr. Capen to Schoette-Koetting Company. That letter was dated in the year of 1919, I believe.

297 265 Mr. Wannack at this meeting showed me a complete drawing or an assembly drawing of either battery 1 or an entire battery, and then there was another one, a layout of an entire plant. He told me this layout was made by a man by the name of Howard. I believe he said a Mr. Olson had made a model of The Texas Company's plant and gave it to Mr. Dubbs. I believe, if I recall right, Mr. Olson was supposed to have been a pattern maker and made this model.

298 I have seen Olson in the plant of The Texas Company. I don't know of my personal knowledge whether Olson was working for The Texas Company, but I had seen him there several times over a period of a year or so. Otto Wannack and a fellow by the name of Kaufman told me Olson had been working in The Texas Company's refinery at Port Arthur, Texas, for some four or five years, and he was also an employee
299 of the Universal Oil Products Company at the same time.

Q. Did Wannack tell you anything about his dealings with Witherup?

Mr. Hall: If your Honor please, is that the same line, that this witness was not present when he had this conversation about Witherup? Surely anything that Wannack might have told him about anybody could not be relevant in this case.

The Court: I will sustain the objection to that on the same grounds as before.

Mr. Von Holst: I offer to prove that Mr. Wannack on this occasion told Mr. White that he had made contact with a man named Witherup who had formerly worked for The Texas Company and that he had gotten in touch with Mr. Witherup because Mr. Witherup was supposed to have had some connection with the furnishing of the jet pump in the early experimental work of Otto Behimer, and that Wannack told White that Witherup was in financial difficulty and owed approximately one thousand dollars on his home and he asked Otto Wannack to help him with reference to paying off this note, which Mr. Wannack did, and took a personal note for one thousand dollars, that
299 266 Wannack told White that later on to pay the note
300 off he rendered an expense account to the Universal Oil Products Company over period of several months at approximately twenty-five dollars per day for services rendered by Mr. Witherup, which amounted to something over twelve * * * hundred dollars, and that the money was received by check, and that Mr. Witherup repaid Wannack his thousand dollars note and Wannack retained the balance of the money; that Wannack told him, White, at this meeting that the check in payment came from the Universal Oil Products Company. I submit, your Honor, that that last fact is properly deductible from this witness,

that Wannack told him that this check for a thousand dollars came from the Universal Oil Products Company.

Mr. Hall: Your Honor, can we get into this case all kinds of transactions, loans to a man to pay for his house?

The Court: I ruled with you. I am sustaining your objection to the offer.

Mr. Von Holst: Q. Was anything said by Mr. Wannack about a Mr. R. C. Powell?

301 A. Yes. Mr. Wannack stated—

Mr. Hall: We object to what was said.

The Court: I can't very well rule on the answer until I know what was stated.

Mr. Von Holst: Q. Who was Mr. Powell?

Mr. R. C. Powell at that time was a construction
302 engineer in Port Arthur for The Texas Company.

303 The Court: Was Mr. Wannack relating to you at this time a past occurrence?

A. That's right.

Mr. Hall: That we object to.

The Court: Sustained. You can make your offer of proof.

303 267 Mr. Von Holst: I offer to prove that Mr. Wannack told Mr. White that Mr. Dubbs had signed up Mr. R. C. Powell with the Universal Oil Products Company, but that later Mr. Powell backed up and refused to go through with the contract because he had been told by Mr. Holmes that it was like changing armies in the midst of the battle.

The Court: I will sustain the objection.

In that Houston meeting Mr. Wannack said that he
304 was going to get in touch with Morris Beyt and get the keys himself or have Beyt give him an extra set of keys, which he was supposed to have in his possession, and he was to deliver the keys to me for my use.

He stated he wanted me to procure operating reports and run sheets on such matter as experiment No. 8, experiment 11-B, experiment 18 and battery 1, and I believe jet pump operating on battery 43, and probably battery 3, too. He wanted to know if there had been any experiments conducted on any kind of rotary
305 pumps, on Morris pump and surge pump. It all related to back trapping of condensate from an aerial

condenser back to a preheating coil; to Mr. Otto Behimer's early work for The Texas Company.

During this visit at Houston, we went to Galveston for the week end, that is, on Sunday, and went in the surf, went in bathing. While out bathing in the surf Mr. Wannack looked back at the bathing pavilion and stated that he hoped the pavilion didn't burn down. I asked him why and he says well, he had eighteen thousand dollars up there in a safety deposit box. I told him I thought he was kidding about it. He said no he wasn't, that he could show me. So later in the evening when we came out and went up to the Hotel Galva for dinner, and later on arrived at Houston on the interurban I asked about the eighteen thou-
305 268 sand dollars and he said he would show it to me.
306 I still said I thought he was kidding. He said I can show you better than I can tell you about it. So he pulled out a Rice Hotel envelope, a large envelope and tore it open and flashed a number of large bills. I saw some two or three one thousand dollar bills, several five hundred dollar bills and quite a few one hundred dollar bills. Then I told him I supposed he was correct, that he did have eighteen thousand dollars. He said this money was his expense money he obtained from the Universal Oil Products Company. He said he received this money by registered mail in cash only, he never did receive checks.

After this Houston visit, I next saw Mr. Wannack in Port Arthur near my home. That was several days later. This time he asked me to visit the refinery and
307 to go to Mr. J. H. Burlingham's room who was mechanical engineer working in the research laboratory in the same building where part of these files were located that he wanted ransacked, and stated that there was a master key in the key file box, and if I could get that key out of Mr. Burlingham's desk that I could open the case that Mr. Burlingham kept these keys in, and secure all of the keys for the files. And if I couldn't get in to do that I could go to the telegraph office of Texas plant, where a bunch of keys was kept. This was in the main office of the Texas plant, which was across the street from the research laboratory, and for me to borrow this bunch of keys and use the master key to get into this building for the purpose of obtaining these keys, the keys to the files. He suggested that

if I didn't get these keys from Mr. Burlingham, I was
308 to get them from Mr. Beyt. He said he would pay as
much as five hundred dollars for the keys.
308 269 At that particular time Mr. Brunow was mixed
up in the case, and Mr. Brunow was to be a go-
between and assist in getting the keys, and he thought
probably one hundred dollars would be enough to
satisfy Beyt.

Mr. Wannack at this meeting said that Beyt had been working with him in obtaining some information, that he was getting cold feet and getting yellow and he was quitting. He said that Brunow was all right, he was the only one that had come clean with him and obtained information for him.

On one occasion, after this talk with Mr. Wannack, I saw Mr. Beyt near the file cabinet. I saw Beyt putting down some numbers on a piece of paper, and when I came in he got away from the file case. That was
309 in the west side office upstairs where Mr. Behimer's files were located at, and Mr. Beyt was standing in front of the file cabinets.

On a number of occasions I had talks with Mr. Brunow about Wannack's activities.

310 I went to a meeting where Wannack and Ward and
311 Brunow were present. Soon after this trip to Houston, on returning to Port Arthur and learning that Mr. Ward was in town and Brunow had left and was going to Beaumont to meet Wannack and they were to have a meeting and a discussion, I talked with Mr. Dellinger and stated that I thought it would be a good idea if I could go to Beaumont and see if I couldn't secure the affidavit that Wannack had made out for Beyt, in order to use that on Beyt to find out how much information he had taken out of the plant or whether he had taken anything out. So I did. I proceeded to Beaumont and walked in on them. In fact I saw them in the lobby of the hotel but didn't want to
311 270 meet with them there but waited till they went up on the elevator and I caught the next one. Just after they went in the room I went in too. They were very much surprised and asked what I was doing there. I said I was over there for a day's fishing and thought I would run over and see them. And then I told Wannack what I wanted, and he very gladly turned the affidavit over to me. I told him what I wanted it for,

that I wanted to use that as a lever or action on Beyt to find out how much information he had produced, if any.

312 Wannack gave me the affidavit that he had drawn up for Beyt to sign. It was not signed by Beyt when he gave it to me.

About this time Wannack said that he was leaving and was going to Chicago and Jamestown, New York, for keys. I asked him why, and he started to pull his ticket out of his pocket to show me that he was going to Chicago and Jamestown, New York. And at this period Brunow handed him a slip of paper with some numbers on it, or attempted to, and I took the slip of paper out of Brunow's hands and copied the numbers and put them in my notebook, copied them in my notebook. Wannack said those were the numbers of the file cabinets. Then he pulled his ticket out and said "To show you I am going after the keys" he stretched his ticket out about a yard long. He said that he was going to the factory at Jamestown and have the keys made, either by them or in some way or other he was
313 going to get the keys. He said he was to turn the keys over to me for my use to enter the Texas Company's offices and the file cases for the purpose of ransacking them and getting the desired information.

At this meeting Wannack said he had a brand new Corona typewriter that he had purchased for the
313 271. purpose of M. S. Beyt using for corresponding with him, Wannack, so that he would not have to write in longhand, and that in writing he told Beyt to sign all mail as a friend, not using his name, and that I could have the typewriter with all the stationery for my use, as he knew that Beyt did not intend to further use it.

The stationery was letterheads and envelopes, post office box address on it, Beaumont. I was to use the stationery in corresponding with Mr. Wannack.

314 I met Wannack again probably a week or ten days later upon his return from New York and Chicago. I met him in Port Arthur, Texas, at the City Slip. Mr. Wannack, H. A. Ward, and myself were present.

Wannack came in and told me he had just arrived back from the East and he had the keys. He says "I have two sets of them and I am going to give you one set and I will keep the other." He said "Here

they are, old top, it is up to you to go to The Texas Company's plant and get into the offices and ransack the files.

To my best recollection, he gave me nine keys on two rings. I believe there were four on one and five on the other. He handed me one ring and stated that
315 one ring was for Mr. Behimer's files and the other was for the laboratory files, supposed to have part of the information he wanted in there, Stratford's file I believe; in other words, the legal department.

He ordered me to proceed with the ransacking and get the information. I told him I would see what I could do.

That same night I got in touch with Mr. Dellinger, assistant superintendent, and went out to the refinery with the keys to see if they would work. We
315 272 found in the west side office in Mr. Behimer's files there was one key that did not work and four keys that did work.

Leaving there, we went to the laboratory in Mr. Stratford's office and tried out these keys. We found one that would not work and three that did, one key unlocking two different file cases due to the fact that they had the same numbers.

315 I asked Mr. Dellinger then to feed Mr. Wannack some material. In other words, phony material out of the plant, similar in nature to what he was asking for, which I did.

This material was obtained out of the files of The Texas Company's office and marked by Mr. Dellinger, Mr. Morton, Mr. Dodge and myself. This information was turned over to me and that night by appointment with Mr. Ward I delivered this material to Beaumont with Ward, I driving in my car and Ward in his car; in fact he had come to Port Arthur from Beaumont to see if I had secured any material. I told him I had, so in turn he wanted the material and I wouldn't turn it over. We both drove to Beaumont. So on arriving in Beaumont I turned this material over to Mr. Ward who attempted to deliver it to a fellow by the name of Reeve, a photographer in the Weiss Building on Pearl Street. In doing so he discovered detectives standing across the street and got afraid and returned with the documents and waited some thirty or forty minutes later until people were turn-

317 ing out of the theater nearby, and he mingled in the crowd with them. He then entered the building in which these documents were to be photographed. He later came back and sat in the car with me and
317 273 stated it would be around midnight before he could get the documents back, or the photographs, or the plates back.

I would say it was approximately nine o'clock when this delivery was made.

So we sat in my car till around 12 o'clock. Ward went up and found out that the photographs were not made. They had trouble making them, so he returned and said it would be two or two-thirty before he could get the documents back. So we sat in my car again until that time, when Ward went up and got them. In returning with the documents he told me that the detectives were near by and were close on his trail. In other words, running him; so he ran and got into my car and we drove around some twenty-five or thirty blocks, finally letting Ward out at Keith Park, and I secured the documents and returned them back to Port Arthur, but the photographs we never did get.

318 I understood what became of the photographs by a wire from Mr. Wannack from Chicago to Mr. Ward in Houston stating "A bad job will do better next time." That wire was in Ward's possession, and he showed it to me.

The next contact I had with Wannack was a telephone conversation. Ward stated at this particular time he wanted some money and he was going to get in touch with Wannack to wire him some money, that he wanted one hundred dollars, and to my knowledge he wired Wannack in Chicago either at the Hotel Sherman or the Congress, I can't remember which, the Sherman I believe, stating that he wanted one hundred dollars and also that he wanted him to talk to me, and Ward wired Wannack this telephone number, that he was to talk to me on the following morning.

319 274 It was a long distance telephone number in the Bell Telephone Company's office, Houston, Texas, a public exchange. The number was selected out of a booth.

The time at which he was to call me was specified—the following morning at eight o'clock.

I carried out the call and reported to my superior, and an arrangement was made that the call be transferred over to the telephone annex building, and we had a stenographer sit in and take the conversation. I recall that Wannack stated that he received the photographs but it was a bad job and he would have to do better or would do better the next time. And he stated Ward was going east and on a vacation and he would meet Ward east at some point, probably St. Louis and he would see me later.

After this, perhaps during the first week in August, 1926, I remember meeting Mr. Brunow on Fourth
320 Street and Dequeen Boulevard. From there we drove to the Pleasure Pier.

Q. What did Brunow tell you?

Mr. Haight: To this we make the same objection.

Mr. Von Holst: This has no relation to a past transaction.

Mr. Haight: I understand that, but I don't think the rule would go so far as to put someone in who is not a conspirator to make conversation which would otherwise be hearsay, competent.

The Court: Well it all depends if it is part of the general conspiracy—

321 Mr. Von Holst: That is what it is.

275 Mr. Haight: We are not objecting to Wannack because he was identified as to whether he was or not, he has been identified up to the present time so far as the evidence shows with the plaintiff here.

The Court: And Brunow, he identified himself.

Mr. Haight: Brunow was simply employed by Wannack and now then they are attempting to make Wannack—the testimony of Brunow competent because of the fact that they allege he was a conspirator with Wannack, and the testimony is related to someone who is not a conspirator but who was there for the purpose of gathering information opposed to the conspiracy.

The Court: I don't think that makes a bit of difference. The objection will be overruled.

Mr. Thiess: In view of Judge Haight's question I wonder if I could ask Judge Haight if he would tell us now whether Otto Wannack was an employee of the Universal.

Mr. Haight: That will all come out.

Mr. Von Holst: You won't tell us now?

Mr. Haight: We will bring that all out when the evidence comes.

322 Mr. Von Holst: The only reason we make the point now is that when we were taking Dearborn's deposition some weeks ago they told us they would let us know in three or four days.

Mr. Haight: I wasn't present at the taking of the deposition and if there was any statement made that we should carry out Mr. Hall or Mr. Reichmann will carry it out. So far as I am concerned I would rather have the facts shown by our witnesses, exactly what Brunow's connection was and who Brunow was and what happened to him subsequently. I stated Brunow, I meant Wannack.

The Court: Read the question.

(The last question was read.)

322 276 In conversing with Brunow, I asked him how long he had been working for Wannack and he stated several months. I asked him if he was in the employ of Wannack and he said that he was. I asked him how much he was getting and he said two hundred dollars per month and that Wannack was out of town and he was going to try and get in touch with him. I believe he was in Huntsville at that time. He was going to try and get in touch with him and get some money sent him. In the meantime Brunow tried to get me to get documents out of The Texas Com-
323 pany files and take to Houston and have them photostated where it could be done much quicker and cheaper than by photographing. I told him no, I wouldn't do that, I was dealing entirely with Wannack and I wouldn't deal with Brunow.

Now after this telephone conversation I wound the matter up while visiting in Houston, Texas, and conversing with Ward and getting him to come clean with The Texas Company, which he did, Ward stated that he was with The Texas Company at all times. That was the evening before this. Ward had not told me that before.

324 After that talk we had, I had Ward meet Mr. Dellinger my superior, and in turn we went to Mr. L. R. Holmes' office in The Texas Company's Building, and he related his side of the case, and it was

agreed then that we both write a letter to Wannack breaking our relations with him. That positively was done, but I can't remember whether it was that day or when.

I had no further personal contact with Wannack after that, but I met other agents of the Universal Oil Products Company.

324 277 I met a man named Kaufman. I first knew him
325 when I commenced working for The Texas Company in Port Arthur in the research laboratory.

Mr. Haight: Can't we positively shorten things? Do you propose to prove that Kaufman was an employee of the Universal other than by statements of Mr. White?

Mr. Von Holst: That is one of the things you were going to tell us. Do you deny he was an employee?

Mr. Haight: I don't know anything about it. It is your job to prove you case. Now go ahead to prove it.

Mr. Haight: I object to the testimony of Mr. Kaufman because there is no proof that Kaufman was an agent of Universal.

Mr. Von Holst: Supposing he told Mr. White that he was.

326 The Court: That is not proof. You can't establish the fact that I am an agent by my declaration.

Mr. Thiess: I want to ask whether the plaintiff is not going to live up to the statements made at the time of taking the deposition.

329 Mr. Hall: I would like to say, if your Honor please, that we have looked up the record about the employment by the Universal Company of some of the gentlemen that our adversaries referred to. I have a memorandum of it. We find that Mr. Kauf-
330 man was employed as a special investigator from the summer of 1926 until the summer of 1927, that Mr. Kerr was employed throughout the period by the Universal, that Mr. Olson was employed throughout the period under investigation by the Universal, and that Mr. Wannack received certain moneys from the Universal, but we would prefer to let the evidence speak as to his exact relations because we think that is a matter of some importance and we would much prefer to do that.

340 278 In my testimony in describing this time that Mr. Ward and I took these drawings to Beaumont to be photographed I said they were phoney. I did not mean that they were exactly phoney documents. They were actual documents of a blue print and run report which was actually conducted in operation but was marked and used for the purpose of identification. These documents did not have anything to do with Behimer's early work. That is what I meant when I said they were phoney.

341 I mentioned that I met a man by the name of Kaufman. I first became acquainted with him at Port Arthur, Texas, as a chemist working for The Texas Company. I met Mr. Kaufman in the summer of 1926. Mr. Kaufman was formerly known to me as an employee of The Texas Company as a chemist in the research laboratory at Port Arthur, Texas. He called me at my home by telephone and inquired for me. That was either in the latter part of July or in August, 1926. Upon receiving this call I called Mr. Kaufman to find out what he wanted. He invited me at a nearby residence to talk and converse with me. Upon that par-

342 ticular meeting I did meet with him but due to the fact that he had company there was nothing said at that time. I met him again the following day by appointment at the same residence. At this particular time he told me that he was representing the Universal Oil Products Company of Chicago, Illinois, and that he had been sent to Port Arthur for certain information pertaining to the early experiments of Mr. Otto Behimer of The Texas Company. He stated what he wanted. He wanted reference to information or

279 files pertaining to Mr. Otto Behimer's work on jet pump operations and back trapping of condensate back to preheating coils, hence cracking. He stated that Mr. Dubbs with the Universal Oil Products Company had sent him there to obtain this information. Mr. Otto Wannack had evidently fallen down on the job or had not procured the information he desired.

343 Kaufman wanted records of Mr. Otto Behimer's files on his early experimental work. Records showing where he used methods of back trapping clean circulation of either air condensers or any clean circulation where a jet pump or other means of clean circulation was used for the purpose of returning condensate back

to preheating coils. He wanted blue prints or a general setup showing the apparatus as it operated, and also the actual or original operating reports so that he may determine whether these experiments were actually conducted or not.

He asked if I did not know or could not secure the information myself, that I connect with others and make arrangements for him to meet with them, and at this particular time he gave me a list of names of Texas Company employees.

344 Defendant's Exhibit 216 is a list Mr. Kaufman gave me of Texas Company refinery operators for the purpose of contacting and making arrangements for him to meet with for the purpose of getting affidavits from them that either the work referred to had been conducted or had not been.

280 H. A. Pond was a high pressure still operator who was known to me as formerly connected with Mr. Otto Behimer on his original experimental work early in 1916 on experiment 8. He worked with and directly under me later on experimental work. Roy Baker was a utility man. He was a mechanic and an operator that worked on experimental work, Mr. Behimer's work.

345 Tinz Culbert was a high pressure still-man operator on the Holmes-Manley vertical still.

A. M. Castle was an operator. I do not know just what capacity he was in but I do know he worked as an operator on the Holmes-Manley high pressure cracking still.

Hugh Wallace was a pipe fitter that worked throughout the entire plant of The Texas Company at Port Arthur.

Jagoe was a still-man operating on the Holmes-Manley high pressure cracking still.

Shorty Devillier was a still-man, a high pressure still-man operator on experiment 11-B.

There were several Watsons known to me, but I don't know of anyone at that particular time that was working on high pressure still operations.

Paul F. Terrier was a still-man on the Holmes-Manley vertical still, an operator. Terrier did early work with Mr. Behimer.

J. D. Thompson was a still-man on the Holmes-
346 Manley vertical still operations. H. L. Livergood in

his early work was working with Mr. Otto Behimer on experiment 11-B and other work, and later as a pumper on commercial operation. Reuben Ludwig was a high pressure still-man operator on the Holmes-Manley vertical still. He did not work with Otto Behimer to my knowledge.

281 I. C. Collins was a high pressure still-man operator. He worked on Mr. Otto Behimer's experimental work on experiment 11-B and other operations.

J. O. Traweek was first known to me as a tester in the testing laboratory. Later he was an area supervisor for the west side area.

J. A. Hunter was an operator on Mr. Behimer's early work on experiment 11-B, in the research laboratory. And later a still operator, and then later on a still inspector.

J. P. Noble, at the time of his service with The Texas Company when I knew him, worked in the research
347 laboratory with Mr. Otto Behimer on his experimental work and was known to work on earlier work.

N. T. Fuller was a still-man operator, worked on Mr. Otto Behimer's early work on experiment 11-B, and later on commercial operations. When Mr. Kaufman gave me this list he desired me to contact these men and make arrangements for meeting so that he could get an affidavit from them as to what work they had worked on and as to what they knew about Mr. Otto Behimer's early experimental work. I don't remember that Kaufman stated any particular amount of compensation to me for these records. He did say something though, he said the men would be more than compensated for their trouble. I remember making a report of the matter but do not recall. I had had a
348 talk with Wannack about Kaufman. That particular night Mr. Wannack gave me the keys he told me it was up to me, to go to it and ransack the Texas Company's files. He stated that either on his visit going to New York after the keys or returning he had stopped and visited in Chicago with Mr. C. P. Dubbs and
282 Mr. Dubbs had then told him that he had hired a man by the name of Kaufman.

Mr. Haight: I don't think that is proper. That comes within your rule as to past transactions, that he had met Mr. Dubbs in Chicago and Mr. Dubbs had told him he had employed a man by the name of Kauf-

man. Now, we have admitted Kaufman was our employee, but I don't think we ought to have related a conversation by Wannack as to what Dubbs told him about Kaufman.

The Court: Overruled. You may make your offer to preserve your record.

349 Mr. Von Holst: We want to prove here that in this conversation Wannack told Mr. White that on his journey back from the East where he had these keys made he stopped off and talked with Mr. C. P. Dubbs and Mr. Dubbs told him that he had employed Kaufman, and told him what he was willing to pay Kaufman for these documents. I think that is not within your ruling.

The Court: No.

353 The Witness: This conversation with Wannack when Kaufman's name was mentioned by Wannack was the first time I had heard of Kaufman from Wannack.

354 Wannack stated that Kaufman was an agent of the Universal Oil Products Company. He said Mr. C. P. Dubbs had told him that. He told me what C. P. Dubbs had told him, Wannack, about the arrangement which C. P. Dubbs had made with Kaufman.

355 The Court: I don't think that's admissible unless it was an arrangement which Dubbs had made with Kaufman with reference to payments to Mr. White or with reference to something Mr. White was to do. It was just simply his arrangement.

The Witness: Mr. Wannack at this time said probably I would see Kaufman. That Mr. C. P.
355 283 Dubbs had highly recommended me to him through Mr. Wannack, and Kaufman was to see me. Wannack told me that it was up to me to cooperate with Mr. Kaufman. Evidently there was some feeling running there between Kaufman and Wannack. He said
356 it was up to me whether I would cooperate with him or not. I did not tell him anything about whether I
357 expected compensation from Kaufman if I worked with him. Wannack stated I should work with Kaufman in procuring the documents from The Texas Company's files on Mr. Behimer's early experimental work.

Mr. Von Holst: Now, your Honor, I think that that shows that Wannack had given White the entree, and

that thereafter, as Judge Denison has pointed out, what Kaufman told White is competent.

The Court: In furtherance of the conspiracy, that's all right, that is as to any work he was to do.

Mr. Von Holst: This conversation we are trying to get in is the terms by an admission by one of the conspirators, the terms under which Kaufman and Dubbs had made their arrangement for Kaufman to get in touch with Ward.

The Court: I don't think that's admissible. I will sustain the objection.

358 Mr. Von Holst: We offer to prove by this witness that at the conversation referred to Mr. Wannack told Mr. White that he had made arrangements with a man named Kaufman who had told Dubbs that he was willing to get all the information, records, blue prints, for the sum of fifteen thousand dollars, and that Dubbs had agreed to the terms.

358 284 The Court: I am not so certain but what it might be competent as holding out the hope to Mr. White that he would be well compensated if he would assist in getting the documents. That conversation shows that there was fifteen thousand dollars to be had by somebody. I am inclined to think that is competent. I think I shall admit the offer.

Mr. Reichmann: Of course, here they are trying to prove the connection of Mr. Dubbs with Kaufman by a pure hearsay statement on the part of Mr. Wannack.

The Court: For that purpose I would not consider it. This is a statement made by Mr. Kaufman for the purpose of inducing Mr. White to join the conspiracy.

359 Mr. Reichmann: In the first place there is Kaufman who would be the essential witness to show any talk he had with Mr. Dubbs.

The Court: It is admissible just for one purpose, that Mr. Kaufman was an employee of the company and he did hold out this inducement to Mr. White to enter the conspiracy or continue with the conspiracy. For that purpose it is admissible, but it is not admissible I think for the purpose of showing Mr. Dubbs was in the conspiracy.

Mr. Von Holst: I submit that we have already shown that by the testimony of Brunow.

The Court: Well, that of course is a question for argument.

Mr. Hall: May I suggest that inference should not be indulged in because it is too remote. Now, the witness has testified already that Wannack did not
360 285 indicate to him that he was to get any part of the moneys that were to be paid to Kaufman, whatever they were, and presumably the witness subsequently did meet Kaufman, and if he were to get any part of the moneys, or even to get a promise of any part of the moneys Kaufman would have indicated that to the witness when he met him and the witness could testify on that point.

The Court: Well, I think that it is not too remote. Let me say this, that I don't see that it makes a great deal of difference either way. The evidence is not admissible for the purpose of bringing Mr. Dubbs into the conspiracy, and the evidence, if it is uncontradicted, all the evidence and I think even the admissions made in the opening statements, indicate that there was an effort to obtain copies of the documents. That was a fact admitted in the opening statements, so I don't see why we are hearing so much about it in the evidence, taking up so much time on it on either side. It has been stated by Mr. White here that he was getting documents and they were to be returned. That much was
361 admitted in the opening statements. You have admitted in the opening statements that you did want to get these documents for the purpose of determining what Mr. Behimer had done in his early experiments.

Mr. Reichmann: I want to say it is true that if we thought it would be made to appear from the testimony that they would be put in, that there were efforts made by Wannack, but we also said by Universal, because this man Wannack was never authorized to do what he did there anyway.

361 286 The Court: Well, anyway, Mr. White is testifying that an employee was endeavoring to get copies of the documents, and I think you said the documents were all restored, that you were interested in finding out what the real facts were as to the invention and what Mr. Behimer did, and when he conceived the idea.

Mr. Haight: Speaking for myself, and I think I express the view of my colleagues, we don't want to take time with objections that don't amount to anything, but we don't think it proper to attempt to drag in statements

by Mr. Dubbs as to this, that or the other thing, especially the statements of these astronomical amounts
362 of money by a statement of a man like Wannack whom we will eventually show to your Honor acted entirely beyond any authority given to him, and he went down to Port Arthur and held out tremendous inducements—

The Court: Possibilities.

Mr. Haight: —to these people, why we don't want the record to have something of that kind in it.

The Court: If he did that and he was sent down there by you, I am afraid his statements are admissible, at least until you show they were made without authority.

Mr. Haight: I think that's so, but I am talking about his statements as to what he promised these people. We have not objected to that, but his statements of what Mr. Dubbs or somebody else said to him, about cash transactions, that is all we were objecting to.

362 287 The Court: I shall admit it for the present.

Mr. Von Holst: Your Honor, of course, realizes that the admission of over-zealous employees is an admission in extremis.

The Court: I am not called upon to express an opinion upon that question.

Mr. Haight: I don't know exactly what is meant,
363 but I think we must all keep this thing clearly in mind. We are charged with unclean hands. The acts of an agent that would ordinarily bind a principal may not make the principal guilty of unclean hands.

The Court: I know it.

Mr. Haight: It would have to be some responsible officer of the company that authorized, connived at or induced things that would constitute unclean hands.

The Court: Well, I said I would not consider this evidence on the question of Mr. Dubbs' connection, that is that Mr. Dubbs had authorized the payment of any money. It does not prove that. It simply proves a hope of that sort was held out by a conspirator.

Q. Now, will you tell your conversation with Wannack about this question of compensation and his arrangements,—about Kaufman, what did Mr. Wannack tell you about Kaufman in regard to his visit to Port Arthur?

A. He stated upon his return from Jamestown,

364 New York, to Chicago, or en route back to Port
364 288 Arthur, stopping off in Chicago he visited with C. P. Dubbs, stated that upon returning with the keys that he presented to me on this particular night that Mr. Dubbs told him that he had hired a man by the name of Kaufman to either assist him, or could get all of the desired information for fifteen thousand dollars. Wannack stated that he did not like it and told Mr. Dubbs that if Kaufman could do this for him to hop to it.

Q. Now then coming back to your conversations with Kaufman, did you ask Kaufman anything about Wannack?

A. Yes. I asked Kaufman when I visited with him where Wannack was at. He stated he was in New York City.

He said Wannack and a man by the name of Olson went to New York City for the purpose of securing information from The Texas Company's files in the New York office. I told Kaufman that he was wrong, that all the information was still in Port Arthur, that
365 there was not any in New York to my knowledge. Stratford's name was mentioned in that conversation. Kaufman said that Wannack wanted to get in touch with Stratford in order to obtain information from the files of The Texas Company.

367 289 Kaufman stated that Wannack was not in Port Arthur because he had gone to New York City. After I had told him that the files that I had reference to were still in Port Arthur and not in New York to my knowledge he said then he would wire Wannack to come back to Port Arthur. Kaufman said that the Texas Company would suspect him due to the fact he had been a former employe of the company, and he would rather not be seen with employes or ex-employes. I told Kaufman when he asked me to go ahead and get these records for him that I would not do that until I had seen and conversed with Wannack,
368 due to the fact that I was first dealing with him and would not unless I had Wannack's permission. He then stated that he would wire Wannack and have him return from New York and make arrangements for my further work.

290 Some two or three days later, after Kaufman had given me this list of employes that I have

identified, I talked to him again. He asked me at this particular conversation if I had got in touch with any of The Texas Company employes and I told him that I had. He wanted to know what the results were. I told him that those I had come in contact with had already signed affidavits for The Texas Company. He
369 said that was all right, skip those. I had a conversation with Maurice Beyt about this matter. That was on the same date that I met Mr. Wannack in Beau-
370 mont, Texas, and procured Beyt's affidavit that Wan-
371 nack had prepared for his signing, that same afternoon. By referring to page 51 of my report, to refresh my recollection, I find that date to be July the 16th, 1926. That is the date I got the affidavit from Wannack that he had prepared for Beyt. I, of course, had known Beyt for a number of years. On arriving back
372 to Beaumont with this affidavit it was shown to my superior and it was immediately photostated, and at 4:30 that afternoon, or just before 4:30, or quitting time, I went out to the gate to the garage where Mr. Beyt had his car parked, and pulled my car up in back of his and blocked his exit for the purpose of showing him this affidavit to see what he knows about it, trying to get him to sign it. He first said he did not know anything about it, he did not want to, was very excited. Finally he admitted that he did know something about it, but did not want to have anything further to do with it. That he was afraid he would get in trouble. He did not tell me how much he had done. I asked him, but he did know Mr. Wannack. In my dealings with Mr. Wannack he did go by another name, by the name of Cal Smith. I first knew that he was using that name during my visit at the week end of the 4th of July in Houston, Texas.

373 291 We had some time to kill there in Houston, and I suggested that we go out to visit some friends of mine, a friend by the name of Carmody. On visiting this home Wannack advised that I introduce him as Cal Smith and I did and later asked him why. He stated that he had too many irons in the fire and that he had this alias.

Q. Did you ever see any other drawings of The Texas Company in Wannack's possession besides this one that you saw in Ward's car?

A. I am not positive, but I am sure I seen one in Houston. It should be referred to in my report.

Q. Now, in speaking of this affidavit that was pre-
374 pared for Beyt, did Wannack tell you who drafted that affidavit?

A. He said that he had at the instance of Mr. C. P. Dubbs.

Mr. Wannack mentioned Mr. Dubbs' name to me on every occasion that I visited with him.

Q. Did he ever tell you about Mr. Dubbs being in Texas?

A. Yes.

Q. What did he tell you about that?

Mr. Haight: I object to that question, if your Honor please, that is a past transaction.

The Court: Objection sustained.

Mr. Von Holst: Q. Now, in this conversation with Wannack when he asked you for the Shefstead and McKinzie reports, did he say who wanted that?

A. Yes, he said Mr. C. P. Dubbs of the Universal Oil Products Company wanted it.

Q. Did you ever have any conversation with Mr. Wannack about the hiring of Powell?

A. Yes. That was in June, 1926.

375 Q. What did he tell you about Powell?

A. He stated that Mr. R. C. Powell an assistant engineer—

375 292 Mr. Haight: That is objected to again.

The Court: What does the conversation with Mr. Powell have to do with this?

376 Mr. Von Holst: It has to do with the proposition that Mr. Wannack told Mr. White that Dubbs had told him that he was making arrangements to hire Powell, and Wannack told White that he told Dubbs not to bother with Powell. And then told him whom he should get, and what he thought he could get him for.

The Court: I do not think that is admissible.

Mr. Von Holst: I offer to prove by this witness that at the meeting referred to Wannack told the witness that Dubbs had suggested to Wannack the hiring of Powell, a Texas Company employe, and that Wannack had told Dubbs not to hire Powell as Behimer might consider an offer of a thousand dollars to fifteen hundred dollars a month.

The Court: And the objection to the offer is sustained.

Mr. Von Holst: Q. At the time these keys were given to you by Mr. Wannack, did you see how many sets of keys Wannack had?

A. Two.

To my best recollection he had one set in each hand.
377 He gave me two sets of keys; that is, there were keys on two different rings. As to whether or not he kept a set of each for himself, it was dark, he had the keys in his hand. As well as I could tell and see they were duplicate sets of keys, and he stated that he was going to keep a duplicate set of each set of keys on each ring.

378 Q. You testified yesterday that you went with your superior to these file cabinets. What I want to know is, what was the ultimate disposition of those keys.

293 A. Those keys were photostated in my presence, both sides, to retain the numbers on them for identification, and these keys were later turned over to the legal department of The Texas Company for safekeeping, with the photographs.

Q. Now, you spoke of obtaining some unsigned affidavits from Mr. Wannack for Mr Beyt to sign?

A. Yes, sir.

380 Mr. Wannack told me when he gave me these blank affidavits to have Mr. Beyt sign the affidavits. I was to go to Beyt to get him to sign.

Mr. Hall: If your Honor please, may we cross-examine a little along that point?

The Court: Yes.

Mr. Hall: Q. As a matter of fact, didn't you go to Mr. Wannack and ask him for the affidavits?

A. I did on this particular occasion. But prior to that time, he told me he had this affidavit prepared,
381 and I could have it for my use, and he wanted me to get Beyt to sign the affidavit.

Mr. Hall: Q. But in the meantime you had taken the affidavit that you had gotten from Wannack, that you had asked Wannack for and you had gone to someone in The Texas Company in authority and showed it to him, had you not?

A. That is right.

Q. And shown him the affidavit and they instructed you to have Beyt sign the affidavit so as to tie Beyt up?

A. No, I am sorry.

Q. Wasn't that the way it was? Now is it not your statement, "At nine A. M. of 7-16-26, I met Mr. Dellinger"—he was a Texas man, wasn't he?

A. That is right.

294 Q. Working for The Texas Company as a detective more or less in this investigation, this matter of the attempt of the Universal to get records, or copies of records from The Texas Company; that is correct, isn't it?

382 A. I did not know. He was a superintendent. He was my superior.

Q. All right. "And it was agreed that I go to Beaumont and secure the unsigned affidavit of M. S. Beyt and any other evidence I could get." Now that was your report, wasn't it?

A. That is right.

Q. And that states the truth, of course, doesn't it?

A. It does.

The Court: Well, I am inclined to think that even though at this time Mr. White got this affidavit for the purpose of taking it to the company even though it was an affidavit prepared by Mr. Wannack, it is admissible in evidence no matter what was done about it afterwards, as part of Mr. Wannack's work.

Mr. Von Holst: Q. Will you state whether you can identify these documents I show you as the blank af-

383 fidavits which Wannack asked you to get Beyt to sign?

A. I do. I identify DX 217, 218 and 219 as photostatic copies of the original affidavits that I obtained from Wannack. These documents have on various pages ink interlineations. I cannot identify whose handwriting that is in ink.

295 *Cross-Examination by Mr. Hall.*

388 I testified on direct examination that I obtained these proposed Beyt affidavits and then carried them to someone in authority in The Texas Company. They told me to get him to sign the affidavits and the purpose of it was an effort to see how far he had gone in obtaining other information. It was not done for the purpose of making him sign. When I went to him from The Texas Company I drove up in back of his car so that he could not get out and endeavored then,

pursuant to the instructions which I had received from The Texas Company, to try to have Beyt sign those affidavits.

389 I said on direct examination that Wanneck told me that Dubbs had employed Kaufman and had promised to pay him $15,000, also that Wannack told me that Dubbs told him that he had employed Kaufman and had obligated himself to pay him $15,000 to obtain certain affidavits or records from The Texas Company or copies of them. I reported that transaction to The Texas Company at that time and my report (part of DX 198) was as nearly correct as I could remember.

390 The report I made to The Texas Company of the occasion when I went to Beyt and tried to get him to sign that affidavit was within a day or two, since it was my practice to generally report current transactions from day to day.

391 I substantiate report dated July 21, 1926 (part of DX 198) in its statement that the night when I met Wannack and Ward at the city slip in Port Arthur and Wannack gave me the file cabinet keys, he
296 said that on his way to the factory in New York he stopped off in Chicago and went to C. P. Dubbs' home and had dinner with him. He said Dubb told him a man by the name of Kaufman, a chemist and former employe of The Texas Company, had recently come to see him and offered to secure the desired information to win the suit from The Texas Company for the sum of $15,000.

I made an effort to keep on good terms with Wan-
392 nack and led him to believe that I was working with him heartily until after I found out what his conspiracy was. I cannot say that I found out very early since I learned later from him that he had been on the case some six or eight months prior to that.

393 On or about June 23, 1926 I learned what he was trying to do and from then on I was reporting to The Texas Company. I gave Wannack the impression I was working with him.

Q. Now is it not the fact that you learned from him that the object was to obtain the truth regarding Mr. Behimer's activities in respect to this cracking still about which the investigation was directed?

A. Put the first part of that question again, I did not ge that correct.

Mr. Hall: Will you read the question?

(Question read.)

394 A. He stated that that was his object, to obtain the truth, but I had no way or means of knowing whether he wanted it or not.

Q. But that is what he stated to you?

394 297 A. That is right.

Q. And he stated to you that the purpose was, so far as the procurement of affidavits from employes or ex-employes, who had knowledge of this matter, that the purpose was to get the facts regarding what had been done in reference to that still, isn't that so?

A. That is partially true.

Q. Sir?

A. Partially.

Q. And now in what respect is it wrong?

A. Shall I relate?

Q. Yes, sir, in what respect is it wrong.

A. Instead of wanting affidavits he wanted either myself or any other Texas employe that he could get in touch with to enter The Texas Company's plant and ransack the files for the purpose of securing what he wanted.

Q. Now of course you have used this word "ransack" several times so that you have burned it into my mind.

A. Shall I say "pilfer"?

Q. You can use pilfer if you want to, sure. I would
395 rather expect that you would. But now was it not a fact that the documents he wanted you to get were to be copied, and the originals returned?

A. That is what he proposed.

Q. Now you claim that you saw him with large amounts of money, such as Amos and Andy talk about, making out his income tax returns. Now were any of those large amounts ever given to you?

298 A. No sir.

The total amount that I ever received was ten dollars. Wannack never gave me any money to pay anyone else. I cannot say that I saw a given amount
396 paid to anybody else. I did see him give Brunow some money but I cannot state the amount. It might have been a hundred-dollar bill, or a twenty, or a ten, or a five, or a one. This was the only time I saw
299 money pass from his hands into somebody else's.

I did see thousand dollar bills in the possession of Wannack, and I am sure that they were not one dollar bills. There were some thousand dollar bills, five hundred dollar bills and one hundred dollar bills.

397 I was familiar with bills of these denominations, but I was a little shocked at it. I never got any of them nor turned them over to The Texas Company so they could hold them. I found out later than I should have taken all he offered me. I didn't consult with anybody in The Texas Company about taking that money until about the time the case was being closed. At that time I consulted Mr. L. R. Holmes of Houston, Texas and possibly some others. I probably consulted with R. J. Dearborn in the Legal Department, but am not sure. I possibly made a record of it but cannot say if it is
398 in these reports until I have identified them. I did not say I had seen Wannack in possession of $18,000. I said he told me he had $18,000 and since he had disclosed these several large bills I gave him credit for having $18,000. They were enough to shock me, but
399 I don't believe that I included that in my daily report. I went over my daily reports recently, I would say Friday or Saturday of last week, with Von Holst, and cannot recall that I ran across this $18,000 transaction.

400 I had no say as to having The Texas Company end this matter in the very early stages when I found out what Wannack was doing. Later on, about the time the case was being closed, I did suggest it.

401 I left the service of The Texas Company in 1934 and came back again in 1936. I stopped all my investi-
300 gation of Wannack and others in September, 1926, at the instance of my superiors and not voluntarily at that time. There was a letter written to Otto Wannack telling the reason I broke off with him and about that time I signed the affidavit as to the authenticity of my report. Some two or three months later when they were trying to secure Behimer, they asked me to come back into the picture again, but I refused because of personal reasons which I would rather not state.

402 I personally took from The Texas Company and turned over to Wannack one blueprint on a Holmes-Manley vertical still setup—a general assembly drawing, and one operating report. To my knowledge the Holmes-Manley type of still is one and the same as the Behimer type of still. I could not tell you what date

it was that it was taken out of the plant or the date
404-5 that was on that paper. The paper was identified though, by dates on it when it was taken out. This paper was not a fake, it was the original blueprint of the original run report from this particular factory. It was of no value in case it was lost and not returned, I suggested to T. G. Dellinger my superior and obtained his authorization to take it out and give it to Wannack. This paper was photographed and the original given back to me.

301 *Redirect Examination by Mr. Von Holst.*

406 I stated on cross-examination that I received ten dollars from Wannack. It was partly used to defray my expenses for buying gasoline and lube oil to make the trip visiting Mr. Wannack.

At the particular time of receiving this ten dollars, Wannack offered me twenty dollars and I told him I
407 had not earned it, that I did not want it. He insisted that I take the ten dollars, which I did.

Q. You testified on cross-examination that you came into my office and went over your reports with me. Did you also go to the offices of the attorneys of the Universal Oil Products Company?

A. I did. Here in Chicago.

I also visited them in Washington, where I spoke with Mr. Hall and Mr. Thomas.

In Chicago I saw Mr. Seguy and Mr. Reichmann.

On cross-examination I was asked about this Behimer matter when I declined to cooperate with The Texas Company. That matter came up in the latter
408 part of 1926. I would say in December, 1926, and then I would say January, 1927.

409 Mr. Hall asked whether I ever reported that eighteen-thousand-dollar episode to The Texas Company in the daily reports. I did not.

412 Q. In your conversation with Mr. Thiess and with myself in going over this testimony how was the examination of you conducted?

302 A. From the facts of my reports as reported.

Q. Did we ask you questions and you answered them?

A. That's right.

Q. Did we at any time suggest to you the answers?
A. None whatever.
Q. Would you say that your examination by the attorneys for the defendant in preparation for this hearing was fair?
A. It was.

303 *Recross Examination by Mr. Hall.*

409-10 I arrived in Chicago last Friday morning at the instance of J. B. Thiess and had one interview in his office. We did not go over my reports page by page, only partially.
Q. Well, did you tell Mr. Thiess what you told me, that the Universal never wanted anything but the truth so far as you were able to tell from your contact with the emissaries of the Universay Company?
A. I will say this in dealing with—
Q. Can't you answer my question yes or no whether you told him that?
A. I will say yes.
Q. And did you tell him, as you told me, that so far as you were able to tell from your contact with the
411 emissaries of the Universal Oil Products Company they did not want any false affidavits and did not want to destroy any evidence so as to impair the efforts of The Texas Company to prove Mr. Behimer's actual work?
A. State that again, please.
(The question was read.)
A. I still don't know how to answer that.
Q. Can't you answer it yes or no?
A. Well, I am liable to impair my testimony if I should say that one way or the other.
Q. Well did you tell me that?
A. I told you so far as I knew, but I told you that I could not trust Mr. Wannack and his associates
411 304 with any of The Texas Company's information.
Q. But you told me so far as you knew that was so?
A. So far as I know, yes, but bear in mind that I could not trust Wannack or anyone else.
Q. Did you tell Mr. Thiess this, so far as you knew that was so?

A. That's right.

412 305 Whatever I told Mr. Hall was the truth, I didn't misrepresent anything, nor did I have any reason to misrepresent anything to him.

306 MARY EGELER, Chicago, Illinois:

330 *Direct Examination by Mr. Thiess.*

My present occupation is stenographer. I worked
331 for the Universal Oil Products Company for nine years. I know Mr. Carbon P. Dubbs. My position with the Universal Oil Products Company during this period was Mr. Dubbs' secretary. Mr. Carbon P. Dubbs was vice president of the Universal during this period. He was vice president while I was working there and I worked there from 1921 to 1930. I know Otto Wannack and I know that Mr. Wannack was in Port Arthur and Houston during the period of 1926 and 1927. I would not say I corresponded with Mr. Wannack while he was in Port Arthur and Houston.
332 I sent him the things that he asked for. I remember receiving requests from Mr. Wannack for money. And I sent him this money. I got those requests by letter. And when I received these requests I sent him the money in bills by registered mail. When these requests came in for money I discussed with somebody in the Universal Oil Products organization whether the request was legitimate and whether the money should be sent. When Mr. Dubbs was there he always O. K.'d it, and I got authority from the accounting department.
333 When Mr. Dubbs was not there to O. K. it the accounting department O. K.'d it. It went through Mr. Dunham's hands in the accounting department. During this period there was never any objection made to any request for money by Mr. Wannack. I don't remember about how much money I sent to Mr. Wannack in this manner. I have no idea.

307 I don't know whether it was customary to send money by registered mail in cash bills to the employees of the Universal Oil Products Company. But I did not send money in that manner to anyone else. I suppose it was Mr. Dubbs who told me to send the money in that manner to Mr. Wannack. I don't re-

member receiving some papers in the shape of drawings and run sheets from Mr. Wannack when he was in
334 Port Arthur addressed to me. I don't remember receiving a box from Mr. Wannack containing a number of keys. The only correspondence that I remember with Mr. Wannack was in connection with the moneys he desired in the work he was doing at Port Arthur and Houston. I have no recollection at the present time of the largest amount of money asked for by Mr. Wannack at one time that I sent to him at Port Arthur. I have no idea whatsoever. I have no idea whether he ever asked for money in the denomination of thousands. I don't remember that.

335 Mr. Hall: Q. Do you say you don't remember or he did not ask for it?

A. He never asked for any such amount as a thousand at one time.

Mr. Wannack accounted to me for the money he received in sort of a memorandum. I filed those memoranda in the files at the Universal Oil Products Company. Those memoranda were there at the time that I left.

I have heard the name Cal Smith. I know that Mr. Wannack went by that name at times. I don't
336 308 know whether I ever sent him money as Cal Smith at Port Arthur. I don't remember. I did not send the money in the name of Cal Smith. I said that I knew he used that name but I did not send any money to Cal Smith. I don't know the individual who told me he was going by the name of Cal Smith. I saw Mr. Wannack in the offices of the Universal Oil Products Company. He was not there quite frequently. It would be impossible to state how often I saw him there. He took up practically all his dealings with the legal
337 department. He talked to Mr. Dubbs. Not Mr. Halle that I ever recall. Not Mr. Dunham that I recall. I don't know when Mr. Wannack left the employ of the Universal. I could not say whether he was still in the Universal's employ when I left. I left the employ of the Universal in March, 1930.

309 *Cross-Examination by Mr. Hall.*

337 The approximate amounts of these individual remittances that I sent to Wannack ran from $300 to $500, sums like that.

338 310 *Redirect Examination by Mr. Thiess.*

I don't remember on how many occasions I sent Mr. Wannack money. It was more than one occasion. The money that I sent him I got from the cashier of the Universal Oil Products Company. They were Universal funds that I sent him.

311 *Recross Examination by Mr. Hall.*

338-9 A regular accounting record was made for all moneys sent to Wannack and, so far as I know when I left, these records were all intact. I do not recall what if any reasons were given to me for sending the money to Wannack in cash. So far as I know Wannack requested it. It is too long ago to know just where that request came from.

339 312 *Re-redirect Examination by Mr. Thiess.*

I do not know who told me to send this money in cash to Mr. Wannack. I don't recall whether I ever met Mr. Wannack at Mr. Dubbs' residence in Wilmette. It is possible. I can't say definitely.

413 313 LLOYD H. THOMPSON, Harlingen, Texas:

Direct Examination by Mr. von Holst.

At the present time I am county right-of-way agent, serving the American branch of the International Boundary Commission between Mexico and the United States.

In the summer of 1927 I was acting as president of the First National Bank at Harlingen, Texas. I had been in that position from the beginning of 1924 and I sold my bank in the summer of 1928.

During the summer of 1927 I met Mr. Carbon P.
414 Dubbs. I see him here in the court room. I met him in my bank. He had Mr. Robert Kerr with him. Mr. Kerr and Mr. Dubbs came to my office and asked if I was acquainted with R. H. Behimer and Otto Behimer, which I answered affirmatively. They stated that they wanted to contact Mr. Behimer and I told them that Mr. R. B. Behimer lived in the country about five miles from Harlingen, that Mr. Otto Behimer I understood was at Port Arthur. They afterwards explained it was Otto Behimer they wanted to contact but they wanted to talk with Mr. R. H. Behimer who was Otto Behimer's father.

415 I knew Mr. R. H. Behimer. I had known him personally since 1924 in Harlingen. Mr. R. H. Behimer is now dead.

At that first conversation I reported not only where Mr. R. H. Behimer lived but where Otto Behimer was and asked them why they didn't go direct to them, and they reported that there was a pending case between their company, the Universal Oil Products, and The Texas Company, and it was a little difficult to get a conference with Otto Behimer and they wanted to talk to his father relative to the matter. They said
314 they had not been able to make a date for a conference or have a conference with Otto Behimer.

I asked what their business was, inasmuch as I was
416 making an introduction I felt that I wanted to know what the matter was, and they explained to me that they wanted to employ Mr. Behimer as a petroleum engineer or technologist. After this case was mentioned I asked them if they wanted to use him as a witness or suppress any evidence that he might have, and they said they did not.

Following this first conversation, after an investigation of Mr. Dubbs and the company, which I was not familiar with either, I introduced them to Mr. R. H. Behimer. We had several conferences. At these conferences Mr. R. H. Behimer and Mr. Dubbs and Mr. Kerr and I were present.

The general discussion was with Mr. R. H. Behimer as to whether or not it would be to Otto's advantage to have a conference with Mr. Kerr and Mr. Dubbs, and the same assurances were given R. H. Behimer that
417 were given me, that it was a matter of employing him

at a much better salary than he was receiving, and the ultimate outcome was that Mr. R. H. Behimer, as well as myself—and part of the conferences were held with Mrs. Behimer, and later on with Otto Behimer's wife, and they were all of one accord, that it would be advantageous for Otto to hold this conference.

Mr. R. H. Behimer told me that Otto was very reluctant to hold a conference with anyone on account of his extreme loyalty to the company he was working for, and then, on account of this case, because he was afraid they were taking some advantage of his position as chemist or patentee of the rights being operated or used by The Texas Company; patent rights, I refer to.

315 After these conferences, the plan was finally worked out that I wire Mr. Bill McClosky, a very close personal friend of mine, and a boyhood friend of
418 Mr. Otto Behimer's and the Behimer family. Mr. McClosky was then in Billings, Oklahoma. The object in wiring him was to get Otto Behimer to meet with him and consider the advisability of holding a conference with Mr. Kerr and Mr. Dubbs. I wired McClosky to come to Harlingen at our expense on a legitimate business proposition, terms to be explained when he arrived. He came.

The agreement between Mr. Kerr and Mr. Dubbs and myself was that I think Mr. Kerr was to furnish the expenses, the traveling expenses, wiring expenses, and whatever loss of time was necessitated by McClosky's coming and this was done.

After Mr. McClosky had got to Harlingen, we went
419 through the same system of meetings and explanations as formerly expressed, and Mr. McClosky endorsed the plan and thought that it was very much to Otto Behimer's advantage to hold the conference. I am not sure whether McClosky wired or phoned, but he got in touch with Mr. Otto Behimer and Otto Behimer agreed to come down for the week end.

I know what Mr. McClosky told Otto Behimer. He told him that he was visiting Mr. Thompson and I, and he wanted him to come down and spend the week end with him, and also he believed he owed it to his father to spend the week end with him, as he had been sick for about three weeks previous to that time, quite sick and was still not fully recovered and was in a

weak condition. There was nothing said by McClosky to Behimer about the Universal Oil Products representative being in Harlingen.

420 316 Mr. Otto Behimer arrived in Harlingen on Saturday morning about seven A. M. on the Missouri Pacific train and was met at the station by his father, by Bill McClosky and I think Otto Behimer's wife also met him, she was at the Behimer home.

I sat in on a conference of McClosky, Mr. Kerr, Mr. Dubbs and Mr. Otto Behimer, and it is possible his wife might have been there, I am not sure. That was on Saturday evening at the bank about bank closing time after Otto Behimer had arrived that morning. He spent the day with Mr. Bill McClosky at the R. H. Behimer home.

I am not sure whether I introduced Mr. Otto Behimer to Mr. Kerr and Mr. Dubbs or whether Bill McClosky did, but they were introduced at my bank.

421 The object of the conference seemed to be, and was so stated, that they were anxious to hold a conference with Otto Behimer for the purpose of employing him as a petroleum technologist or to put him in charge of laboratories belonging to the Universal Oil Products Company. At that time Mr. Otto Behimer had not yet consented to enter into the conference, or listen to any terms that might be offered. But before that conference ended that evening Mr. Otto Behimer said "I will talk it over with the folks and let you know tomorrow."

The next day Mr. R. H. Behimer, Mr. Otto Behimer, Mr. Bill McClosky came in or called me, I don't know whether they called me before or after they came in, and I went to the bank and let them in. After a few preliminary remarks, Mr. Otto Behimer signified his willingness to listen to whatever proposition Mr. Kerr and Mr. Dubbs had to offer. I left them because something called me away, in fact I had done what I proposed to do and that was to bring them together and let them work out their problems.

422 317 After that I had talks with Mr. Kerr and Mr. Dubbs concerning the way negotiations were proceeding; principally with Mr. Kerr. At different times most every phase of the contract was discussed with Mr. Kerr, principally with Bill McClosky, and R. H. Behimer came to me every day, and several times a

day reporting what propositions had been made and what advances had been made in their conferences.

I think it was on the second day of their conferences that Mr. R. H. Behimer reported to me, that is the father, that if Otto made a contract with the Universal Oil Products Company it would be necessary for him to have some money in advance or it would be embarrassing for him probably. Within a very few minutes after that I had a conference with Mr. Kerr.

I might explain that the meeting place at the bank
423 was back of my office and it was impossible for them to get in unless they unlocked the grille door at the back, a padlocked door, without going through my office; consequently I had these conferences and the boys went back and forth, telling me whatever they saw fit to tell me. Mr. Kerr came through and I reported to Mr. Kerr that I thought probably the thing that was holding up the culmination of the contract was the fact that it might be embarrassing to Otto Behimer to make a contract unless a bonus could be furnished him. Mr. Kerr said he would report to Mr. Dubbs and report back. Mr. Kerr reported back and said the bonus could be arranged.

I do not know that I was definitely told what the final terms of the contract were, but I was kept in touch with the procedure and what was discussed.
424 Bill McClosky told me the general terms of the contract. I saw something that looked like a written contract.

I think that conference lasted about two or three days, probably three days before they seemed to
318 get to an agreement. And they were probably there two or three days after that, at least a portion of the time.

425 Mr. R. H. Behimer then informed me that Otto Behimer was going on a tour of inspection to California with Mr. Dubbs. I do not know whether Otto Behimer went back to The Texas Company at Beaumont or Port Arthur after this contract was signed. It was reported to me by Mr. R. H. Behimer afterwards that he did not.

Besides McClosky, Mr. R. H. Behimer told me what the terms of this agreement were. The exact terms were never explained to me by Mr. Dubbs or Mr. Kerr, excepting that Mr. Kerr told me that they were paying

Otto Behimer considerably more than what he was getting with The Texas Company.

My recollection of this is rather clear and detailed
426 because it seemed a very big proposition to me and a great opportunity for Otto Behimer and, as a very dear friend of his father and mother, knowing them better than I did him, I was very much interested in seeing the contract made. After the introduction was made, I had very little to do with the conferences held. I was afterwards paid compensation for my services in bringing these parties together.

After this, I met Mr. Dubbs in Chicago in 1930.
427 It was a date after Otto Behimer's mother died. I was in Chicago on business and called at the office to see Mr. Behimer and met Mr. Dubbs and had lunch with him. Mr. Dubbs introduced me to someone at Universal. There were four of us at lunch that day.

Q. And what did he say on that occasion?

A. Well, he jokingly said—

Mr. Reichmann: It seems to me that is wholly immaterial, and past the event of Otto Behimer's employment.

319 Mr. Von Holst: This, your Honor, is a statement which Mr. Dubbs, vice president of the company made to Mr. Thompson after the transaction.

The Court: It seems to me that a president or vice president of a company cannot bind the company by statements as to what was done at some other time. It is no evidence against the company.

Mr. Von Holst: No, your Honor, I submit that the question I ask is not even in that direction. It is not. The difficulty with the objection is that you can't tell—

The Court: Now state what you want to prove and I will see.

428 Mr. Von Holst: He is ready to testify that in this conversation Mr. Dubbs introduced Mr. Thompson as the man who had done in a few days what he had been trying to do for two years.

The Witness: What the other fellows had been trying to do.

The Court: I do not see that that is material. I do not see that it has much bearing on the question. His testimony is to the effect that they succeeded, through his introduction, in employing Mr. Behimer away from The Texas Company, which they had a right to do,

and I do not see that that testimony will be material in the case.

Mr. Von Holst: This remark shows that it was not the first time that the Universal had tried it.

The Court: Hadn't the Universal a right to employ Mr. Behimer if it could?

Mr. Von Holst: Your Honor, it is hard to argue these things one at a time, it is the whole picture that counts.

The Court: You have made the offer, and I sustain the objection.

Mr. Hall: No cross-examination.

320 R. L. MURRAY, Port Arthur, Texas:

429 *Direct Examination by Mr. Thiess.*

I am District Judge of the Sixtieth Judicial District of Texas at Beaumont. I have worked for The Texas Company. I worked for them first in 1911. I was fourteen years old at the time, and, intermittently until I believe the summer of 1917. During the latter part of that period I worked on some experimental work that Mr. Behimer was conducting.

I was a student at the Law School of the University
430 of Texas at the time and came home in summer, and during the vacation period was employed there as assistant in the laboratory work. And I believe in the summer of 1917 I was one of a crew of five or six working every day or night, or both, while Mr. Behimer was running experiments on two or three different experimental processes.

After graduation from the law school, I entered the practice of law. I did not do any work for The Texas Company as a lawyer. I occasionally did probate work for the employees and the local personnel officer would send occasionally employees up to me. It was largely probate work, on account of people that were killed out there at the refinery.

While I was practicing law, representatives of the
431 Universal Oil Products Company came to see me several times. Mr. Kaufman was the first one who called on me about a matter in the early part of 1927. He said he was making an investigation of facts and

wanted an affidavit as to what I remembered about the runs I think on No. 7 of Mr. Behimer's experiments.

I think he stated that he had learned that I had
321 given an affidavit to Bill Donaldson of the patent department of The Texas Company, and probably Mr. Stratford, and stated that he would like to know about it too, and I gave Mr. Kaufman an affidavit about it.

Two or three weeks later Kaufman called on me
432 again. He stated that he wanted me to come to Chicag and talk with Mr. Dubbs of the Universal Oil Products Company—that Mr. Dubbs wanted to talk to me, rather. I went to Chicago and met Mr. Dubbs at the office of the company, 310 South Michigan Avenue. I don't know what Mr. Dubbs' position with the Universal was when I met him in Chicago, but I am informed that he was an officer of the company, vice president.

On the occasion of the first meeting Mr. Kaufman took me up and introduced me to Mr. Dubbs and my only recollection of the conversation is talking to Mr. Dubbs at the first meeting. There might have been
433 other people there, I don't know. I was here two or three days I believe. I saw Mr. Dubbs once or twice. Either at that time or a later time I met Mr. Belknap and Mr. Olson and Mr. Kerr I believe, or I met Mr. Kerr later. I believe I met Mr. Reichmann some time during that period, I don't know just when.

The only one I remember at this meeting was Mr. Dubbs, that is to remember positively, there may have been other people there. It was stated to me that the information I had given in my affidavit was contrary to most of the information they had about the fact that experimental work was run in 1917 or that operations were had on the process. I have forgotten the particular features of it, but according to my statement most of the information they had was wrong or, ac-
434 cording to the other information mine was wrong. I couldn't say that I convinced the people at the
322 meeting that my affidavit was correct. I don't know whether I convinced them. They did not convince me I was wrong.

With reference to the possibility of my being retained by the Universal Oil Products Company as a lawyer, the substance of the conversation was that they

were in need of the true facts of the situation, and would like me to make an investigation, secure testimony and affidavits of witnesses who might know about the facts. Some still lived in Port Arthur and some were scattered over the United States in different parts of the country. And since I worked there at that time in the summer when I was sixteen or seventeen years old I knew a great many of the people and some of the former employees of The Texas Company, and they wanted me to sit in at the trial of the case, so if some witness with whom I was acquainted was testifying improperly or falsely for the other side, I might be able to give the proper information about it. It was a general employment as an attorney in helping to get the testimony for their case.

I did not immediately accept the proposition. I did a few days after that. I don't know whether it was in Chicago or not, but I know I thought it over for a few days, took it under advisement; my recollection is I waited till I got home.

After being retained by the Universal in this capacity, I did not do very much at Port Arthur. I tried to talk to several witnesses but none of them would discuss any of the facts with me. I called over the telephone and attempted to make arrangements for interviews with nearly everyone with whom I worked on that experiment. I talked with Mr. Behimer particularly and tried to get a statement from him but was unsuccessful.

436 323 I called at Behimer's home while he was absent and while waiting for him I discussed with Mrs. Behimer the possibility of getting a statement from him. She had been a client of mine. While I was discussing this matter with Mrs. Behimer, I learned that Behimer was not under any contract of employment with The Texas Company. I communicated that to Universal at once.

As I explained, Behimer had told me one of the reasons he did not want to and would not make any statement to me about his work while he was employed by these people was that he thought it was his duty to refrain from making any statement at all about it. He may have used that term "While I am employed by these people." I then made an inquiry as to whether there was a definite term of employment and when I

learned there was not, that he was simply on a salary
437 without any contract of employment, I communicated that fact to Universal and gave them as my advice that he was a likely person to be employed, and that was the only way to get a statement from him. You might as well employ him in advance, and that he was a great scientist in my opinion.

After communication with the Universal about this matter of Mr. Behimer not being under an employment contract, I am not sure whether I came to Chicago, I suppose I did. I discussed it with Mr. Dubbs, I don't know whether Mr. Reichmann was there, but I am sure he discussed it with Mr. Reichmann. They were here at the time, Belknap was here. Whether I discussed it with them or simply with Mr. Dubbs and he discussed it with them is a question I do not remember.

There was some discussion as to the possibility of hiring Mr. Behimer away. Whether the discussion was with me or not, I do not remember. I do
438 324 remember that at the time I left Chicago I think there was no final decision made or agreement as to whether or not he could be employed.

I remember another meeting that I had with the members of the Universal Oil Products organization at New Orleans some time in that same spring of 1927. I do not know what the whole purpose of that meeting was. During the course of the meeting I know the possibility of the employment of Mr. Behimer was discussed. Mr. Dubbs and Mr. Kerr and Mr. Olson were present at that meeting in New Orleans. Anyone else I do not remember. And I, I was there. I haven't any independent recollection that I made any suggestion at that time about Mr. Behimer's father and where he lived. I probably did because I had learned previously through association that Mr. Behimer had some relatives down in the Rio Grande Valley, Harlingen or Brownsville, somewhere there, and they were so closely watched in Port Arthur that
439 I couldn't even get to the court house in Beaumont without being reported on, so I suggested meeting somewhere else.

Thereafter I went to Brownsville and either met Mr. Kerr and Mr. Dubbs there or met them on the way there. However, as I told you, I remember very little

about the Brownsville incident. I remember being there but that is about all. I do not remember anything of importance that happened but I was down there and spent three or four days there. I remember this meeting was in July, about the hottest weather I have ever seen, July in Brownsville, 1927. I don't know whether at that time when we were all in Brownsville, Universal Oil Company's representatives contacted Mr. Otto Behimer.

440 A few weeks after the Brownsville meeting I got some kind of a communication by telephone or telegraph either from Mr. Dubbs or Mr. Olson or Mr. Kerr to come to Chicago. I believe it was Mr. 325 Dubbs now because he suggested I bring Mrs. Murray along because I might be away from home for some time. I came to Chicago and met Mr. Dubbs. Mr. Olson joined the party here. I don't know whether I met him here but I saw him before I left the city. After we met in Chicago, we went to Los Angeles, California; I believe the same day that I arrived. In conversation with Mr. Dubbs on the train en route 441 to Los Angeles I learned that Behimer had been employed by Universal and that he was out in California and that we would meet him in Los Angeles. We had three or four days on the train and a number of conversations.

Mr. Dubbs said he had made some inquiries about Behimer and he might be the greatest scientist in the world, and he might not be anything at all so far as his actual knowledge went, but he had a great deal of information about him. As far as actual knowledge went as far as being a scientist, he might be an unknown quantity. As to any information Mr. Behimer might have had with respect to some pending litigation, Mr. Dubbs said now certainly they could get at the facts, he could find out what had happened out there, Mr. Behimer was the only man that did know just what work had been done.

442 When we arrived at Los Angeles, we went to the Virginia Beach Hotel at Long Beach a few miles from Los Angeles. Mr. Kerr was there, and Mr. and Mrs. Behimer. I don't know whether they were there when we arrived, or got there that day, but they were there within a short time after we arrived.

I remember the incident of Mr. Behimer meeting

Mr. Cross at Los Angeles being discussed. They thought it was rather peculiar that Mr. Behimer had seen, before he met them, Mr. Cross with whom he had worked as a scientist. That incident was probably the occasion of being out there at Long Beach instead of in Los Angeles; they didn't want to see Mr. Cross anymore.

443 326 I don't know that Behimer said that. But the whole party had gotten together every day but Kerr or Olson or Dubbs, one of them, made that statement about meeting that day and had gone out to Long Beach.

I did not register at the Virginia Beach Hotel; Mr. Kerr registered for the whole party. He did not register in his name, it was some other name; I believe it was his middle name, McWade. He registered McWade and party. I got my mail at the Virginia Beach Hotel without being registered in my own name because my secretary in my office was going to send
444 mail, and mail I should have, to the Universal office in Chicago and from there it would be forwarded out to the Universal office in Los Angeles and there delivered to me.

We were in California several weeks; Mr. and Mrs. Behimer, Mr. Kerr and Mr. Olson and Mr. Dubbs and Mr. Hall were in this party. Mr. Behimer, Mr. Hall and Mr. Dubbs during this period were holding conferences almost every morning in Mr. Dubbs' apartment. I was there occasionally though not all the time. I was called in occasionally.

Q. And what were you called in for, Mr. Murray, do you remember?

445 A. My recollection is very vague. I think I looked at some documents occasionally, sheets, tabulations of figures, something I had made when I was—they seemed to me to be copies or duplicates, or something like that, of temperature records or pressure records, something of that sort.

Q. Did they have a record of the Behimer early experiments there at that time?

A. I could not say positively, I presume they were. That is only my guess about it.

Q. Some of those you were called to consult about?

A. I believe so, that is my recollection now. I

couldn't say whether I could identify my figures so many years back or not.

327 *Cross-Examination by Mr. Hall.*

446 Q. Judge, so far as you now recall there were no original records relating to Mr. Behimer's work examined at any time while you were in California, or any place else, for the Universal Oil Company people, were there?

A. No, sir. In fact my recollection is that they were just papers, records. I could not tell you whether they were originals, duplicates or photostats.

As I recall, about the only contact I had with Mr.
446-7 Hall at that period was on the golf course.

Q. But do you know whether I was actually out there on that case with Universal, or some case entirely foreign to Universal?

A. I have no knowledge about it except you were there in conference with the others. That is my only information.

Q. And we had a few golf games together?

A. Yes.

Q. And I did not did not discuss with you any of Mr. Behimer's matters?

A. No, sir.

447 328 RICHARD J. DEARBORN,* 22 High Street, Summit, N. J.:

Direct Examination by Mr. Thiess.

448 I am patent counsel for The Texas Company; president of Texaco Development Corporation. I am testifying here in obedience to a subpoena.

I have been patent counsel for The Texas Company since January, 1919. As such, I am in charge of all patent and trade mark matters pertaining to the Texas Company and all subsidiaries of The Texas Corporation.

I met Otto Behimer shortly after I entered the em-

* Deposition taken on behalf of defendant on February 23 and 24, 1938.

ploy of the company in 1919. Mr. Behimer was a research man, chemist, connected with the development of cracking processes for The Texas Company.

The Texas Company maintains an employees' personnel efficiency record for practically all individuals
449 employed by the company. The Texas Company has such a record on Mr. Otto Behimer. I produce DX-175, Mr. Otto Behimer's personal efficiency record. I am familiar with these employees' personnel efficiency records. I have examined a good many of them. They are all available to me.

This salmon-colored sheet shows the salary paid to Otto Behimer during his employment by The Texas Company from 10/25/15 up to the last change in salary, which was 1/1/27. According to this form, Mr. Behimer's salary on 1/1/27 was $833.33 per month.
450 This is a permanent record kept in the files of The Texas Company.

329 At the time I entered the employ of The Texas Company, Otto Behimer had already made a number of inventions pertaining to pressure cracking, and I found that certain applications for patents had already been filed.

451 At the time I entered the employ of The Texas Company, Mr. Behimer was located at Port Arthur, Texas.

Mr. William T. Donaldson was in the refining depart located at Port Arthur, engaged in patent work. I don't believe he was a patent attorney. Mr. Donaldson had worked on and prepared certain applications for filing on the work of Mr. Otto Behimer which immediately came under my jurisdiction when I was appointed patent attorney or counsel for The Texas Company.

DX-176, a certified copy of the file wrapper of an application Serial No. 263,562 (patent No. 2,027,014) filed November 21, 1918, is one of the applications for
452 patent that was on file and pending at the time I entered the employ of The Texas Company. This application was originally filed in the joint names of Holmes, Manley and Behimer. The inventorship in this application was subsequently changed to the sole invention of Otto Behimer.

453 I am not shown a certified copy of a file wrapper

(DX-177) of application Serial No. 630,242, filed April 6, 1923, a division of application Serial No. 263,562, which I identified. I was the attorney of record when this application was filed. This application 630,242 likewise was filed originally in the
330 joint names of Holmes, Manley and Behimer and later changed to the sole application of Behimer.
454 I consulted with all the supposed inventors—Holmes, Manley, and Behimer regarding this change of the inventorship in these two applications. Mr. Behimer's reaction was that he knew that he was the inventor of the subject matter, and as to whether he was a joint or sole inventor, he regarded that as a question of law.
455 As patent counsel for The Texas Company, I can state that application Serial No. 630,242, DX-177, was involved in Interference No. 49,355 (DX-178) in the Patent Office. I was the attorney of record in Interference 49,355. It was also involved in Interference
456 No. 55,610 (DX-179).
457 As patent counsel for The Texas Company, the usual steps were taken by me at the time Inter-
331 ference No. 49,355 was declared to obtain and corral the necessary facts for the preparation of the preliminary statements filed in this interference by Otto Behimer and for the ultimate proof of the dates alleged in said preliminary statements.

I can't recall at this time all the people I consulted with back in 1923, but I do recall that Mr. Donaldson took an active part in getting the evidence together and that we consulted with Mr. Holmes, Mr. Manley, and Mr. Behimer and examined the records of The Texas
458 Company. Mr. Behimer actively assisted in collecting the information, according to my recollection.

During the preparation of this preliminary statement, and at the time it was executed by Mr. Behimer for filing, Mr. Behimer raised no objection to the ac-
459 curacy of the dates and facts set forth in the preliminary statement. He cooperated with us in the preparation of the statement and signed it and swore to it.
460 In Interference 49,355, Dubbs filed a motion to dissolve, one of the grounds in support being that the jet 7A in the Holmes et al. process as a means of returning reflux condensate to the heating coil renders the process inoperative. In Interference 55,610, Dubbs

moved to dissolve on the ground that the Behimer application discloses an inoperative process and apparatus, one of the grounds urged being that the jet 7A of the Behimer application is inoperative for returning the reflux condensate to a heating coil in an oil-cracking system. Mr. Behimer cooperated with us in the consideration of the question raised by the motion to dissolve the interference on the ground of inoperativeness. To what extent he participated in the preparation of the brief in opposition, I do not recall.

461 I discussed whether or not this jet pump would work with Mr. Behimer personally. Mr. Behimer assured me that the jet was operative.

Mr. Behimer left the employ of The Texas Company in the summer of 1927. I believe the interferences

332 were still pending at that time. Mr. Behimer did not tender a resignation in writing at the time he left the employ of The Texas Company.

462 Shortly after he left the employ of The Texas Company, which was in the early part of August, 1927, he wrote a letter to The Texas Company, dated August 24, 1927, in which he notified the company that he was resigning from the service of The Texas Company on this day, that is August 24th. I produce that letter (DX-180). I see a notation on the letter that indicates that Mr. R. C. Holmes sent me a copy of the letter on August 27, 1927, and I now recall having seen the letter at the time. I am acquainted with Behimer's signature. That is Behimer's signature on the letter.

463 This letter, since its receipt by The Texas Company, has been in the files of The Texas Company.

This letter (DX-180) reads:

"Port Arthur, Texas,
August 24th, 1927.

"The Texas Company,
17 Battery Place,
New York City, N. Y.

Att: Mr. R. C. Holmes, President.

My dear Sirs:

This will notify you that I have this day resigned from the services of The Texas Company.

From my knowledge, there is no work left unfinished,

but should there be, you can write me at my home, Port Arthur, advising me of the same.

Inasmuch as I have been away on personal matters during most of the month of August, I do not wish
464 company to pay the August salary.

Appreciating any favors you have bestowed upon me in the past, I am

Yours truly,

Otto Behimer.

O:G

RJD-PCS (Personall & Confidential) from RCH 8/27/27"

333 Mr. Behimer at no time told me that he contemplated leaving the employ of The Texas Company and I do not recall any substantial dissatisfaction expressed by Mr. Behimer prior to the time he left. I was surprised that Mr. Behimer had left the
465 employ of the company and resigned without discussing the matter with The Texas Company officials.

In response to the letter of resignation of August 24, 1927, a letter of August 27, 1927 (DX-181), was written
466 to Mr. Behimer, and signed R. C. Holmes. I recall receiving a copy of the letter at the time it was sent. This letter was addressed to Mr. Otto Behimer, Port Arthur, Texas, and a carbon copy was sent to Mr. Otto Behimer, care of his father, Mr. R. H. Behimer, RFD #1, Harlingen, Texas, by Mr. R. C. Holmes.

This letter (DX-181) reads:

"August 27, 1927.

"Mr. Otto Behimer,
Port Arthur, Texas.

My dear Behimer:

I am just in receipt of your letter of the 24th, and am of course very much disappointed that you have
467 decided to resign your position with us.

I know something of the pressure that has been brought to bear from other sources, but I think I could satisfy you that it would be more to your interest, all things considered, to remain with The Texas

Company, and I would appreciate it very much if you could come here immediately for a conference with me.

Yours very truly,

R. C. Holmes.

RCH-LAG cc Mr. Otto Behimer
c/o R. H. Behimer, R.F.D.#1,
Harlingen, Texas.

BLAND: RJD-PCS (Personal and Confidential)"

468 334 At the time this letter was written, Mr. Holmes and I were of the belief that the Universal Oil Products Company brought pressure to bear upon Mr. Behimer to leave our employ. It is my present recol-
469 lection that Mr. Behimer, prior to the time he actually left the employ of The Texas Company, had been approached by representatives of the Universal Oil Products Company at Harlingen, his father's home, and that he so reported to Mr. Holmes and me.

I produce a letter dated September 30, 1927 (DX-182), from Behimer to Mr. R. C. Holmes, President, in response to this letter of August 27, 1927, to Mr. Behimer. I see a stamp on this letter "Rch October 3, 1927" which indicates to me that it was received by Mr. Holmes on that date. I saw this letter at or
470 about the time it was received.

Attached to the letter is a photostatic copy of Otto Behimer's salary check dated August 25, 1927, which he returned to Mr. Holmes with the letter of September 30th. The amount of that check is $763.33. I may say there that that check, I believe, represents the net salary after deduction for stock payments which were being made currently for Mr. Behimer. The
471 items "Trustees Stock Series 25" and the figure "70" on the stub of the check indicates that $70 was deducted from his salary to apply to his Series 25 stock.

During that period, The Texas Company allotted trustee's stock to employees who were particularly deserving, at prices below the market. Some of the allotments were made at par, $25 a share, and some of the allotments were made at higher prices, but always below the market, adn the employee paid for the stock currently at the allotted price, all dividends being credited to his account and interest being charged against the loan.

472 335 This letter (DX 182) on letterhead of Universal Oil Products Company, reads:

310 S. Michigan Ave.,
Chicago, September 30, 1927.

Mr. R. C. Holmes, Pres.,
The Texas Company,
17 Battery Place,
New York, N. Y.

Dear Mr. Holmes:

Your letter of August 27, 1927 to hand after some delay, as I have been away for several weeks.

My decision, set forth in my letter to you of August 24th, was only arrived at after a great deal of thought and consideration from all angles.

I am now associated with the Universal Oil Products Company under contract with them; therefore, there would be no object in having a conference with you as suggested in your letter of August 27th.

I herewith return you check for August salary, for the reasons already explained to you in my letter of resignation.

Yours very truly,

Otto Behimer.

OB:E

474 336 Under date of October 3, 1927, I wrote Mr. Behimer, care of the Universal Oil Products Company, and produce my file copy of the letter (DX 183). This letter was mailed to Mr. Otto Behimer.

DX 183 reads:

476 "October 3, 1927.

"Mr. Otto Behimer,
Universal Oil Products Company,
310 So. Michigan Ave.,
Chicago, Ill.

Dear Behimer—

We have a number of papers, in connection with the patents and inventions which you have made while in the employ of The Texas Company, requiring signature, and as I expect to be in Chicago Wednesday

and probably Thursday of this week, I would like to present them to you at that time for your signature.

I will telephone you from the hotel in Chicago for an appointment.

Yours very truly,

(Signed) R. J. Dearborn.

RJD:G
Blind
ALB-ASA-PCS (Personal)"

477 I met with Mr. Otto Behimer as suggested in this letter. My recollection is that I met him in Chicago at the office of the Universal Oil Products Company. Mr. Otto Behimer, Mr. C. M. Thomas and myself were present at that meeting. Mr. C. M. Thomas was and is one of the attorneys representing the Universal Oil Products Company.

337 The interview was occasioned by the fact that
478 I desired to have Mr. Behimer sign certain papers pertaining to improvements and inventions made by Mr. Behimer while in the employ of The Texas Company, and it is my recollection that I was informed by Mr. Behimer and by Mr. Thomas that if I would supply Mr. Behimer with a copy of his contract with The Texas Company under which he had agreed to assign his inventions to the company, the papers would be promptly executed and forwarded to Washington.

I find, in addition to the letter of October 3, 1927, which has already been offered, a copy of a letter which I wrote Mr. Behimer on October 17, 1927, which refreshes my recollection that we also were desirous of obtaining Mr. Behimer's signature to an amended preliminary statement due in Washington October 26th.

Q. But have you any recollection as to whether the signing of this amended preliminary statement was also held in abeyance subsequent to the furnishing of the contract which you have previously mentioned?

479 A. Yes. On October 24, 1927 I received a letter from Mr. Charles M. Thomas, dated October 22, 1927, which I now produce (DX 185).

I believe we afterward got a more particular statement of the reasons why the signing of the amended

preliminary statement was delayed in another letter. It is my recollection that the amended preliminary statement which I wished him to sign was either presented to him at the meeting in Chicago or sent to him at about that time. Behimer did not at that time say anything to me as to why he would not sign it. I understood he was going to sign it later.

480 According to my recollection, we did not discuss the merits of the papers there, but I have already testified, I left Chicago with the impression that all the papers would be executed if we produced the contract. In substance I believe my letter to Mr.
338 Thomas dated October 24, 1927, stated the basis for my understanding. The first paragraph of that letters reads as follows:

481 "I was surprised to learn from your letter of October 22nd that any further delay in the execution of the Behimer papers will be necessary, because it was my understanding from my conversation in Chicago when I met both you and Mr. Behimer together that if we would supply you with a copy of Mr. Behimer's contract with The Texas Company the papers would be promptly signed and forwarded at once to Washington."

The paper we needed was the preliminary statement.

I identify the carbon copy of the letter I sent to Mr. Behimer dated October 17, 1927 (DX 184) together with the photostatic copy of his contract (DX 184A). That copy has been in my file since I sent it.

482 DX 184 reads:

483 "October 17, 1927.

"Mr. Otto Behimer,
Universal Oil Products Company,
310 So. Michigan Ave.,
Chicago, Ill.

Dear Behimer—

As promised in our conversation in Chicago, I enclose a photographic copy of your contract with The Texas Company, dated December 15, 1916. I found that the contract was located in New York and consequently I was delayed in sending you a copy until today.

We shall very much appreciate your prompt action

in executing the papers so as to avoid any further delay in getting them on file in the Patent Office.

339 I have talked with Mr. Donaldson and find there are several additional improvements and inventions which will be covered by application as soon as they can be prepared, and unless I hear from you to the contrary I will forward them by mail to your present address.

Yours very truly,

(Signed) R. J. Dearborn.

Enc Blind WTD

PS The amended Preliminary statement is due in Washington October 26th."

DX 184A reads:

484 "Whereas, Otto Behimer is employed by The Texas Company on condition that said Company shall have the benefit of his time and talents while in its employ.

"Now Therefore, for and in consideration of One Dollar paid by said The Texas Company to Otto Behimer, receipt whereof is hereby acknowledged, and of his employment by said Company, said Otto Behimer hereby agrees that he will, upon the request of the Manager of the Refining Department of said Company, assign absolutely to said Company all devices, improvements, apparatus, processes or methods of production or manufacture which he may invent or conceive of while in the employ of said Company and which pertain to any article or class of articles produced, manufactured, experimented upon or dealt in by said Company before or at the time of such invention or conception.

"And the said Otto Behimer agrees that as soon as he shall have conceived of any device, improvement, apparatus, process or method of production or manufacture as aforesaid, he will acquaint the Manager of the Refining Department of said Company by written statement with the fact of such conception

485 and will thereupon, if requested by said Manager of the Refining Department, apply for United States letters patent and/or foreign patents upon said device, improvement, apparatus, process or method of production or manufacture, and will assign said application or applications so that said patent or patents will issue to said Company, and said The Texas Company

hereby agrees to bear all expenses in connection with any such application or patent so made or applied for at the request of the Manager of its Refining Department, and shall through attorneys whom it may name, have full charge and control of said application, and said Otto Behimer shall furnish all informa-
340 tion necessary to the pursuit of such application, and shall comply with all reasonable requests made by said Company in furtherance of such application.

In Witness Whereof, said Otto Behimer has hereunto set his hand and seal this 15th day of December, 1916, and The Texas Company has caused this agreement to be executed by its agent thereunto duly authorized, this 15th day of December, 1916.

Otto Behimer.
The Texas Company,
By T. P. Dodge."

486 Subsequent to the writing of this letter of October
487 17, 1927 to Mr. Otto Behimer, I next received that letter from Mr. Thomas (DX 185) to which I have already referred, dated October 22, 1927. I received that on October 24, 1927. This letter has been in my file since I received it.

488 DX 185 reads:

489 "Bacon & Thomas
Attorneys at law
Patent and Trade Mark Causes
724 Ninth Street Northwest
Washington, D. C.

Oct. 22, 1927.

"Mr. R. J. Dearborn,
c/o The Texas Company,
17 Battery Place,
New York, N. Y.

Dear Mr. Dearborn:

The matter that we discussed in Chicago will not probably be decided until after October 26th, because of other matters which have consumed all of my time.

If you will send me a stipulation extending the time

for filing preliminary statements in the interfer-
341 ence involved, for thirty days, I will be pleased to sign it.

Yours very truly,
Charles M. Thomas."

CMT/hw
(Stamped)
"Received
October 24, 1927
referred to D"

490 I replied to Mr. Thomas under date of October 24, 1927, and produce my file copy of the same (DX 186). That copy has been in my file since I wrote it, and the letter was sent on or about the date appearing on the letter.

491 DX 186 reads:

492 "October 24, 1927.

Mr. C. M. Thomas,
724 Ninth St.,
Washington, D. C.

Dear Mr. Thomas—

I was surprised to learn from your letter of October 22nd that any further delay in the execution of the Behimer papers would be necessary because it was my understanding from our conversation in Chicago, when I met both you and Mr. Behimer together, that if we would supply you with a copy of Mr. Behimer's contract with The Texas Company the papers would be promptly executed and forwarded at once to Washington.

I wrote Mr. Behimer on October 17th, and sent him a photostatic copy of the contract.

It is my understanding that you are acting in this matter as attorney for Mr. Behimer personally, and I shall appreciate your advising me as soon as possible when I may expect the papers.

492 342 I have prepared stipulation requesting extension of time for filing Behimer's amended preliminary statement, and request that you execute and file the same in the Patent Office.

Yours very truly,
RJD.G (Signed) R. J. Dearborn."
Enc.

493 After writing the letter of October 24, 1927, to Mr. Thomas, I received a letter (DX 187) from Mr. Behimer to me dated November 5, 1927, which I now produce. I received this letter on November 17, 1927. I fix that date by reference to the stamp which is applied as the letters are received in my office. That letter has been in my file since I received it.

DX 187 reads:

494 "Chicago, Illinois,
November 5, 1927.

(Stamped)
"Received
Nov. 17, 1927
referred to D"

Mr. R. J. Dearborn,
The Texas Company,
17 Battery Place,
New York, N. Y.

Dear Mr. Dearborn:

Relative to the several applications which you left with me to be executed, I wish to advise you as follows:

1. Re: Application D-10741-A, purported division of application Serial No. 401,623, filed August 6. 1920.

494 343 I must decline to execute this application for the following reasons:

(a) As I understand the claims of this application, they are directed to a process in which a single heating zone, containing a coil, is provided. One portion of the coil is to be arranged in a zone of moderate temperature through which the charging stock alone must pass, to thereafter merge with the reflux condensate, the two oils then passing in an intermingled condition through the remainder of the coil located in that part of said heating zone subjected to a higher temper-
495 ature.

(b) In parent application 401,623 the heating zone, having the heating coil, is arranged whereby both the charging oil and reflux condensate enter the inlet of this coil and travel in a comingled state entirely there through. The addition of the diagrammatically shown

separated heat interchanger and economizer is of no consequence, representing merely common expedients that have, as you know, been generally used throughout the industry.

(e) Unless the specification and claims of application D-10741-A represent a true division of my co-pending application No. 401,623, I could not, in view of the knowledge I now possess, make the oath that the invention claimed had not been in public use for more than two years from the present date; and as I do not believe the invention claimed in this application is a division of my application No. 401,623, I must decline to execute this case.

2. Re: application D-10741-B, alleged division of application Serial #401623.

I have executed and am enclosing herewith, the above entitled application papers. I have also executed the assignment attached to said papers.

496 3. Re: Application 13449.

I refuse to execute this application. This for the reason I am unable to take the oath that the invention disclosed and claimed has not been in public use for more than two years. I know that the Texas Company have had in commercial use for more than two years prior to the present date, a conversion process where the charging oil is admitted to the heating coil at the inlet thereof, while the reflux condensate combines with said stream of oil at a point in the stream where such charging oil is at approximately the temperature of the reflux condensate.

496 344 In view of this public use, I am unable to execute the oath required with the filing of this application.

4. Re: Application 13360.

This application I have properly executed, together with the attached assignment, and am returning the same to you herewith.

5. Re: Application 13635.

After a careful consideration of the specification, claims, and drawings of this application I must decline to execute it for the reason that the invention, as therein disclosed and claimed, was used, to my knowledge, by the Texas Company in commercial operations
497 more than two years from the present date, and I therefore cannot execute the usual oath.

My refusal to execute certain of the applications left with me is, as before stated, due to my inability in each instance to take that portion of the oath accompanying each application concerning the period of public use. These decisions are based on my present recollection relative to the operations of the Texas Company while I was connected with them, and while clear and distinct in my mind at the present time, I would be pleased to again consider the cases if you have any documents or data that you think would assist in convincing me that the decisions I have arrived at are contrary to the existing facts.

I am returning herewith, the unexecuted applications, together with those that I have executed.

Yours very truly,
Otto Behimer."

OB:E

498 I received, on November 12, 1927, a letter (DX 188) from Mr. Thomas, dated November 11, 1927, prior to the time I received the Behimer letter of November 5th. I produce that letter; it has been in my files since I received it.

499 345 DX 188 reads:

"Bacon & Thomas
Attorneys at Law
Patent and Trade Mark Causes
724 Ninth Street Northwest
Washington, D. C.

Nov. 11, 1927.
(Stamped)
"Received
Nov 12 1927
Referred to D"

Mr. R. J. Dearborn,
New York, N. Y.

Dear Mr. Dearborn:

Do you intend to be in New York the week of November 14th, or the following week?

I have certain matters which will require my presence in New York sometime during that period, and there is also a matter I would like to discuss with you if you are going to be available.

Will you please let me hear from you as soon as convenient?

Yours very truly,
Charles M. Thomas."

CMT/hw

500 I telegraphed Mr. Thomas that I would be glad to see him Friday the 18th or during the week of the 21st. I hereby produce a copy of that telegram (DX 189) from my files.

502 Following the sending of this telegram, I received a letter (DX 190) from Mr. Thomas dated November 16, 1927, which I produce from my files.

504 346 I am unable to recollect at present whether Mr. Thomas came in to see me, as suggested in this letter of November 16, 1927, or not.

I wrote to Mr. Behimer on November 25th and hereby produce my file copy of the letter (DX 191), which is taken from my file.

505 DX 191 reads:

"Nov. 25, 1927.

Mr. Otto Behimer,
310 So. Michigan Ave.,
Chicago, Ill.

My dear Behimer—

Your letter dated November 5th did not come to hand with its enclosures until November 17th, and I will discuss the various cases as follows:

(1) This case, as prepared, was a true division of the original application Serial No. 401,623, filed August 6, 1920, and whether the claims are readable on that disclosure or not is purely a question of law.

The time was so short that prior to the receipt of your letter we had introduced the claims by amendment in the original application and this has the advantage of determining the very question which raises a doubt in your mind.

505 347 If the claims are found to be in order and allowed to remain in the parent case, it will be unnecessary to file any division. If, however, they are found to be in order, and division required, we will then resubmit the papers for your signature.

(2) This case has been sent forward for filing.

506 (3) Upon checking this matter we find that you may be right, although the question is somewhat in doubt and we may communicate with you later after a complete investigation has been made.

(4) This application has been sent forward for filing.

(5) We think you are probably wrong in your conclusion in this case and that the invention as operated was not in public use but a plant-scale experiment which continued under close observation for only a period of months.

We are further checking the facts in this matter in order to refresh your recollection and will probably resubmit the papers for your signature with the memorandum to refresh your recollection.

Yours very truly,

(Signed) R. J. Dearborn."

RJD.G

507 I wrote Mr. Behimer again (DX 192) on December 14, 1927, with a copy (DX 193) to Mr. Thomas, and produce my file copy of this letter, which is taken from my files.

508 348 DX 192 reads:

December 14, 1927.

Mr. Otto Behimer,
310 So. Michigan Ave.,
Chicago, Ill.

My dear Behimer—

In your letter of November 5th in which you discussed several of the applications, you did not make any mention of preliminary statement in the case of Dubbs *vs.* Behimer, Intf. No. 55,610 which is due to be filed in Washington before December 27th. The Patent Office Examiner has advised that no further extension of time for filing the preliminary statement will be granted without verified showing, and we therefore request that you execute the statement and have it duly sworn to before a notary public and returned to us as early as possible.

I am sending a copy of this letter to Mr. Charles M. Thomas, who, according to my understanding, is acting in this matter as your attorney.

Yours very truly,

RJD.G
cc to Mr. Thomas

509. DX 193 reads:

Mr. Charles M. Thomas, December 14, 1927.
Bacon & Thomas,
724 Ninth St.,
Washington, D. C.

Intf. 55,610

Dear Mr. Thomas—

The enclosed letter to Mr. Behimer explains itself and I believe there is no question about Mr. Behimer's obligation to execute the paper. I trust therefore that you will advise him to do so and send it to us promptly for filing within the time now set.

Yours very truly,
(Signed) R. J. Dearborn.

RJD.G
Enc.

510 349 Following the letter of December 14, 1927, to Mr. Thomas, I recall that Mr. D. H. Mace, my assistant, wrote a letter (DX 194) to Mr. Thomas on December 22, 1927, under the subject "Interference No. 55,610," copy of which I produce. DX 194-A is a copy of the affidavit of R. J. Dearborn, which was sent with said letter.

511 DX 194 reads:

Interference No. 55,610
December 22, 1927

Copy

Mr. Charles M. Thomas
724 Ninth Street N. W.
Washington, D. C.

Dear Sir:

In connection with the above interference, in which an amended preliminary statement by Behimer is due for filing on or before December 27, 1927, we have not yet been able to secure Mr. Behimer's signature. I

am, therefore, requesting that you sign the enclosed stipulation for a further thirty day extension and file the same in the Patent Office.

I am also enclosing a verified showing, as required by the Patent Office in their communication dated November 28, 1927, in the event any further extensions are requested. I would appreciate it if you would also file this paper and arrange, if possible, for the extension requested.

Very truly yours,
(Signed) Donald H. Mace.

DHM/P
Encs.

512 350 DX 194-A reads:

IN THE UNITED STATES PATENT OFFICE.

C. P. Dubbs
vs.
Otto Behimer
} Interference No. 55,610.

AFFIDAVIT.

Richard J. Dearborn, of mature age, being duly sworn, deposes and says that he is the Patent Attorney for The Texas Company of Delaware, and the attorney of record for Otto Behimer in his application, Serial No. 630,242, filed April 6, 1923, as a division of his parent application, Serial No. 263,562, filed November 21, 1918, which first named application is involved in the instant interference, and the entire right, title and interest in both of which applications is assigned to The Texas Company of Delaware;

That the said Otto Behimer severed his employment with The Texas Company during the month of August this year;

That in the early part of October of this year he personally placed in the hands of the said Otto Behimer an Amended Preliminary Statement in this interference, discussing the matter with the said Otto Behimer
513 and requesting his execution thereof;

That since that time he has communicated on several occasions with the said Otto Behimer or his personal

attorney, in an effort to secure the execution of said Amended Preliminary Statement;

That he last wrote to the said Otto Behimer on December 14, 1927 explaining the necessity of filing said Amended Preliminary Statement before December 27th and again requesting its execution; and

Deponent further says that up to the present time he has not yet received the executed Amended Preliminary Statement from the said Otto Behimer and, therefore, in order to preserve the rights of The Texas Company, requests a further extension in the time for filing said Amended Preliminary Statement.

(Signed) R. J. Dearborn.

Sworn to and subscribed before me this 22nd day of December, 1927.

Edwin C. Jones,
Notary Public.

514 351 Donald H. Mace was one of the patent attorneys in the employ of The Texas Company, and he was directly under my supervision.

Prior to the writing of the letter of December 22, 1927, to Thomas, I do not recall having any personal conversation or writing any other letters to Mr. Behimer requesting his signature to the amended preliminary statement to Interference 55,610 except what have been produced.

515

Subsequent to the letter of December 22, 1927, Mr. Thomas wrote Mr. Mace on December 27th, which came to my attention on or about December 28th, and I produce it (DX 195) from my files.

516 DX 195 reads:

BACON & THOMAS
Attorneys at Law
Patent and Trade Mark Causes
724 Ninth Street Northwest
Washington, D. C.

Dec. 27, 1927.
(Stamped)
Received
Dec. 28, 1927
Referred to D

Attention Mr. Donald H. Mace
The Texas Company,
17 Battery Place,
New York, N. Y.

Gentlemen:

Re Interference 55610

The Examiner of Interferences approved the stipulation forwarded with your letter of the 22nd instant in connection with this interference.

When reading Mr. Dearborn's affidavit, I notice certain reference to Mr. Behimer's personal attorney which has also appeared in some other correspondence I have had with Mr. Dearborn. I presume that by
352 this statement Mr. Dearborn has reference to me.

There is no relation of attorney and client existing between Mr. Behimer and myself, so that it is not proper to refer to me as his personal attorney. If any appointment has been made I know nothing of it, and am referring to the matter at this time in order that Mr. Dearborn will not be laboring under a misunderstanding as to my relations with Mr. Behimer.

Yours very truly,
Charles M. Thomas.

CMT/hw

517 It is my recollection that at the first meeting in Chicago when Mr. Thomas, Mr. Behimer and I were present, that I then received the impression that Mr. Thomas was representing Behimer personally, but afterwards he denied that; and apparently was representing the Universal Oil Products Company at all times.

Following Mr. Thomas's letter of December 27, 1927, I heard from Mr. Behimer respecting the amended preliminary statement in Interference 55,610. I produce letter (DX 196) from Mr. Behimer to me dated March 27, 1928, received March 29, pertaining to Interference 55,610 which has been taken from my files.

519 353 DX 196 reads:

Newark, N. J., March 27, 1928.

Mr. R. J. Dearborn,
Texas Company,
17 Battery Place,
New York City.

Dear Mr. Dearborn:

I have given careful consideration to your letter of October 3, 1927, as well as your subsequent communication of December 14 concerning my amended preliminary statement in Interference No. 55610, Dubbs *vs.* Behimer which was left with me for execution. These letters have not been answered because I was advised by Mr. Thomas, that he had conferred with you and it was agreed that because of certain existing conditions which need not be referred to here, I should refrain from replying until I was advised to do so. I have just been instructed by Mr. Thomas to answer your letters in full and accordingly am replying at this time.

I must decline to execute the statement you left with me. I have no recollection, or data available for refreshing it, which would justify my making the allegations therein concerning conception, sketches and disclosures. Indeed, I now seriously doubt whether these corresponding allegations which were made from
520 information, an important part of which was given me at the time I executed the original statement, by members of the Texas Company organization, are accurate.

Moreover, I would not now execute a preliminary statement alleging the date of reduction of the invention to practice as it appears in both the original and amended statements, since I am now of the opinion that the operation on which this date was based did not constitute a legal reduction of the invention to practice.

I further now question the accuracy of the allegation in both the original and amended statements concerning the commercial use of the invention in issue, since the alleged reduction to practice thereof and would not now sign a statement containing such allegation.

I am therefore returning to you the unexecuted amended statement left with me when you were in Chicago for the reason that I find that I am unable to make the required oath.

Very truly yours,
Otto Behimer.

OOB:LW

521 354 In the first paragraph of this letter there is reference to the fact that Mr. Thomas conferred with me and that it was agreed that because of existing conditions which need not be referred to here, Behimer should refrain from replying until he was advised to do so.

I don't know what the existing conditions were that he specifically referred to in this letter, unless it was the case of The Texas Company *vs.* Warner-Quinlan that was pending at that time and on which we were all very much absorbed.

It was my impression from reading this letter that Mr. Behimer had certain hesitations because the data
522 that he had had before him originally was not before him, and also that apparently he had acquired a little knowledge of the law, which is a dangerous thing, with reference to the interpretation of what would constitute a reduction to practice. It was my belief at that time that if I should have occasion to go over the matter with him again and show him the records that we could refresh his recollection on those points, and that in any event he would tell the truth to the best of his knowledge and belief.

I made no attempt to go over the records with him to satisfy him that the dates set out in the preliminary statement were correct, because it is my recollection that prior to the date that we received that letter we had already acted in the interference and filed a preliminary statement executed by the executive officers of the company, on account of the delay in hearing from

Mr. Behimer. The Patent Office had received and approved the preliminary statement.

523 Q. Did you at any subsequent time get in touch with Mr. Behimer respecting this amended preliminary statement, to ascertain whether or not he was satisfied that the dates stated in this preliminary statement were true and correct?

355 A. I believe so. I believe, though I am not at all sure that we had gone over the matter with reference to any particular preliminary statement, • • • the matter of his early work on which the statement was based had been discussed with Mr. Behimer. I would have to refresh my recollection as to other times, but I know they have been gone over with him recently.

It is my recollection that these matters have been discussed with Mr. Behimer within the last month, or at least within the last two months.

Q. Prior to this discussion with Mr. Behimer regarding the matters during the last two months, did
524 you discuss with Mr. Behimer, or did anyone in The Texas Company organization discuss with Mr. Behimer, to your knowledge, the facts as set out in the preliminary statement as amended, and whether they were correct and true?

A. I have no recollection of any instance in which we had gone over with Behimer the matters covered by the preliminary statement between the time of this correspondence and the recent occasion to which I have referred.

Q. Did you or any member of The Texas Company, to your knowledge, discuss with Mr. Behimer the dates and facts upon which the dates are founded, alleged in the preliminary statement contained in Interference No. 49,355, after the filing of said preliminary statement, other than the discussion wheih you have mentioned which has occurred within the last two months and after Behimer left the employ of The Texas Company?

A. I do not recall any.

525 DX 197 is the proposed preliminary statement attached to the letter of March 27, 1928, DX 196.

356 DX 197 reads:

IN THE UNITED STATES PATENT OFFICE.

Carbon P. Dubbs
vs.
Otto Behimer
} Interference No. 55,610.

AMENDED PRELIMINARY STATEMENT OF OTTO BEHIMER.

Otto Behimer, being duly sworn, deposes and says that he is a party to the interference declared by the Commissioner of Patents, July 15th, 1927, between his application for letters patent for a Process for Making Gasoline, Serial No. 630,242 filed April 6th, 1923 as a division of his application for a Process for Making Gasoline, Serial No. 263,562 filed November 21, 1918, and an application for patent filed by Carbon P. Dubbs; that he conceived the invention set forth in the declaration of interference between February 25th, 1916 and July 29th, 1916; that he disclosed it to others on or about July 29th, 1916; that sketches illustrative of the invention were made in October, 1916, and the first working drawings thereof were made on or about November 6th, 1916; that the first written description thereof was made on or about June 20th, 1917; that he first reduced the invention to practice during the period
527 from May 30th to June 1st, 1917; that the invention has been practiced extensively on a commercial scale since that time; and that no application for letters patent on the invention have been filed by him in any foreign country before the filing date of the parent application for letters patent of the United States.

State of .....
County of ..... } ss.

.....

Sworn to and subscribed before me this ..... day of ..... 1927.

.....

528 357 Mr. Thiess: Q. Were the preliminary statements filed in Interference 49,355 and 56,610, based upon the same experimental work conducted by Mr. Otto Behimer at the plant of The Texas Company?

Mr. Hall: That is objected to as calling for a conclusion.

The Court: That may go in subject to the objection.

529 A. The preliminary statements in Interferences 49,355 and 55,610, to which you call my attention, were prepared by me or under my direction after careful sutdy of the facts and the records of The Texas Company pertaining thereto, and were fully discussed with Mr. Otto Behimer either by me or by one of my associates, under my instructions, and executed by Mr. Behimer on the dates indicated.

Q. Do they both pertain to the same experimental work of Otto Behimer and predicated upon the same documents and records?

Mr. Hall: We would like that to be received under that objection also.

The Court: All right.

A. According to my recollection, the issues in those 530 two interferences were not identical, but they were based to a very large extent upon the same experimental and development work which had been conducted by Otto Behimer in the Port Arthur Refinery of The Texas Company.

The dates as alleged in those two preliminary statements were based upon the same records to a very large extent. Whether there is any difference between the two interferences that would lead to an examination of different records, I cannot say without more careful study.

358 Mr. Thiess: Q. Do you find any difference in the dates as alleged for conception, disclosure, sketches, working drawings, legal description, and reduction to practice, in the preliminary statement filed in Interference 49355 and the original preliminary statement filed in Interference 55,610?

531 Mr. Reichmann: Same objection as urged to all of the questions asked above, and also asking for an opinion of the witness, all being a matter of record in the file wrappers introduced in evidence.

A. I have refreshed my recollection by examining the issues of these two interferences discussed, and

also by reexamination of the preliminary statements filed, and find that the statements are alike in alleging corresponding dates, that the issues differ only in scope and that the bases of the preliminary statements were the same.

In this letter of resignation by Otto Behimer as of August 24, 1927, DX 180, Mr. Otto Behimer states that he was away on personal business most of the month of August and hence returned his salary check
532 for August. I knew Behimer had been absent from the Texas Company during the greater part of August, because I knew when he left Port Arthur, but his whereabouts were then unknown for some time until we heard from him through these letters. At the time we did not know where he was.

Prior to August 24th, the time I got the letter of resignation, various attempts were made by The Texas Company, under the instructions of Mr. R. C. Holmes and myself, to locate Mr. Behimer after he disappeared
533 from Port Arthur early in August. The letter of August 24, 1927, was sent from Port Arthur, Texas, but Mr. Behimer was not at Port Arthur during that period so far as we could ascertain, and it was not until we received the letter of September 30, 1927, written on the letterhead of the Universal Oil Products Company, that we knew, as I now recall it, exactly where he was and what had become of him.

359 Prior to receiving this letter of resignation of August 24, 1927, Behimer told me that he had been approached by representatives of the Universal Oil Products Company about leaving the employ of The Texas Company at his father's farm at Harlingen, Texas, and that he had turned down the proposals that he leave the employ of The Texas Company.

534 When Mr. Behimer was absent from the plant of The Texas Company during August, in view of the fact that he had been previously contacted at Harlingen by the Universal Oil Products Company representatives and that he had left Port Arthur, Texas, in response to a telegram to go to his father's farm because of sickness, we assumed that another contact was being made by the Universal Oil Products Company.

Following the receipt of Mr. Behimer's letter of resignation, we made numerous attempts to get in

touch with him, in addition to having sent this letter,
535 DX 181. I personally was interested in immediately contacting Mr. Behimer, if possible.

Mr. R. C. Holmes, president of the company, and I worked very closely together on this matter and conferred as to what steps could be taken, and my recollection is that decision was made jointly that we should have detectives ascertain whether they could find him, in the belief that if we could talk to Mr. Behimer that we could convince him that his interests lay with The Texas Company.

537 360 I can't give the names of the detectives without
539 refreshing my recollection. I have stated that detective agencies were asked to endeavor to locate Mr. Behimer and they were given such information as we had as to the possible location where he might be found, including Chicago, Illinois, where the Universal Oil Products Company's offices are located, and, according to my recollection, Los Angeles, California. I should add the farm down in the country. We followed up at his father's farm and tried to find out from his father where he was located, but had no success. I did not make the investigation personally, but I, jointly with Mr. R. C. Holmes, instructed that it be made.

540 Prior to August 1927, we had gone over the various dates on numerous occasions with Mr. Behimer and
541. with many other employees of The Texas Company who were thoroughly familiar with the facts, and we had supporting records covering all the pertinent facts necessary, in our judgment, to prove the Behimer case. We have not consulted him recently or at any time since August, 1927, to help us prepare this record because we believed the record was complete, and in fact we have on numerous occasions stated that we believed the proofs were complete even if Mr. Behimer was not called as a witness. We consulted him during the last few months with respect to this matter because we were informed that he had been subpoenaed, by the defendant in this Globe case, to testify, and we felt that his recollection of all the facts should be refreshed.

542 I talked to Behimer personally about a year ago down in Harlingen, Texas, to ascertain roughly where he was and how long his contract with the Universal

Oil Products Company continued, and such things.
542 361 He told me that he had given us or me a complete statement of facts with reference to his early work before he left the employ of The Texas Company and that he had never made any statement contrary to that, although he had given the Universal Oil Products Company as complete a statement of the facts as he was able to recollect. He said that he was under contract of some nature with the Universal Oil Products Company which expired on January 1, 1938.

I did not talk to him any further respecting the facts and circumstances of his experimental work during this conversation at Harlingen.

543 I am not entirely familiar with the earliest recent date when my assistants and representatives contacted
609 Mr. Behimer. After refreshing my recollection, I can state that Behimer came to my office on December 20, 1937, and there met Messrs. Burgess and Mace and proceeded with them, in Mr. Burgess's office, to discuss the matter of his various clean circulation inventions. Mr. Burgess is a member of the firm of Gifford, Scull & Burgess, and Mr. Mace is associated with Mr. Burgess in the same firm.

I can now state that Mr. Behimer's coming to New York for this purpose was not a result of a subpoena served on him in Chicago in this case; his coming on
610 December 20th was apparently previous to that. I recall, however, that when the subpoena was brought to my attention I communicated with Mr. Mace, advising him that I thought he should hasten the matter of going over with Behimer his early work to refresh his recollection, as if Behimer was called he might be asked questions with reference to all phases of the matter. That is what I had in mind when I answered previously.

545 362 The Texas Company entered into an agreement with the Universal Oil Products Company respecting patent matters on January 6, 1931, and The Texas Company made an additional agreement with Uni-
546 versal Oil Products Company December 1, 1937. This agreement of December 1, 1937 did not contain any provisions regarding my consultation with Mr. Behimer respecting his earlier experimental work. There
547 wasn't any understanding with reference to that at all at that time.

It is my understanding, at least since 1932 and perhaps earlier, that he was available to testify to the facts.

Q. Since when did you say?

A. Since at least as early as 1932.

Q. On what do you base that statement?

A. It is my present recollection that he agreed and executed papers in which he agreed to be available to testify.

I am sorry I cannot give you the exact date he executed those papers, but my present recollection is that there was an assignment made about the time or shortly before the time when the principal Behimer patents issued, in order to clarify and simplify the record of title before we would file suits for infringement. Some suits for infringement were filed by The Texas Company based on the Behimer patents, and I believe it was shortly before they issued that an assignment was prepared, particularly in view of the fact that the original application had been filed jointly by Holmes, Manley and Behimer, and assign-
548 ments had been originally made out based on the joint applications; it was thought that it was desirable to have the title completely clear and simplified by a new assignment, and such paper was prepared, and in that assignment Behimer definitely agreed to be available to testify with reference to all of the facts.

548 363 The Universal Oil Products Company was not a party to that agreement; I think that was just a Behimer agreement. That was subsequent to the agreement of 1931 entered into between The Texas Company and Universal Oil Products Company. I think it was about 1932.

Q. Can you tell me why it was that you did actually consult with Mr. Behimer regarding these proofs on his early experimental work within the last three months, and you did not consult with him respecting
549 this work during the period from 1927 until recently?

A. Beyond what I have already stated, the only additional reason that occurs to me is the policy reason: We had many times in the past considered, from the question of policy, whether The Texas Company would be better off to endeavor to examine Behimer as a part of our proofs in establishing the priority of the Behimer invention or whether we would

be better off to prove it without Behimer; taking some advantage of the fact that he was in the employ of our antogonist.

Prior to the time that Otto Behimer was employed by the Universal Oil Products Company, and while he was working for The Texas Company, I had some knowledge of activities on the part of the Universal Oil Products Company in or about Port Arthur, regarding Mr. Behimer's early experimental work.

550 364 I was informed that an investigator claiming to represent the Universal Oil Products Company was endeavoring to ascertain from Texas Company's employees at Port Arthur what the facts were with reference to the Behimer invention. This occurred about May or June, 1926. There was a man named Wannack, who purported to represent the Universal Oil Products Company, contacted certain of The Texas Company's employees with reference to obtaining access to the records showing the important dates in the interference I referred to here.

551 The employee that I have in mind particularly was named Beyt, whom I contacted personally and who made a statement to me covering his contact with the Universal representatives. The last time I had any information about Mr. M. S. Beyt he was in the em-

552 ploy of the Universal Oil Products Company, he entered the employ of Universal Oil Products Company on or about October 1, 1927. At The Texas Company in 1926, prior to the time that he left their employ, Mr. Beyt was a confidential clerk to Mr. Otto Behimer. He held that position for a number of years. I don't know how many. In that capacity he had charge of the Behimer confidential files, or at least he had access to them.

553 I also talked to other employees of The Texas Company who had been approached by outside interests.

I talked with Mr. W. M. Stratford with reference to a contact which he had had with Mr. Olsen, who claimed to represent the Universal Oil Products Company.

I also talked to George White, who was an employee of The Texas Company at the time, and who was also approached by a representative of the Universal Oil Products Company about that time.

554 365 I had a discussion with Brunow and also with reference to contacts which he had had with representatives of the Universal Oil Products Company.

W. M. Strafford is assistant patent counsel of The Texas Company now, and at that time he was either patent attorney or an engineering assistant to the patent attorney located at Port Arthur, Texas. He was working under my direction.

555 In response to your subpoena, I produce a file covering the correspondence of which I received copies at the time pertaining to the endeavor by Texas Company to locate Otto Behimer after he left Port Arthur early in August before we knew where he was definitely located.

556 I received those documents in that file as of the dates appearing upon the several documents. These papers are taken from my own files at The Texas Company.

Mr. R. C. Holmes directed the investigation after consulting with me step-by-step, and I advised him on it.

557 Q. Will you consult the documents which you have produced, and particularly the ones therein contained which you actually sent, in the direction of this investigation, and state where and in what manner you suggested that this investigation be conducted?

A. In August, 1927, when Mr. Behimer left The Texas Company, Mr. R. C. Holmes was president of the company and located in New York. I was at that time, as now, the patent counsel, and located in New York. Mr. W. K. Holmes, Mr. R. C. Holmes' brother, was superintendent at the Port Arthur Refinery, located at Port Arthur, Texas. Mr. Tom Dellinger was the head of the cracking area of the Port Arthur
366 Refinery, and Mr. R. C. Holmes and I, at one end of the wire, and Mr. Tom Dellinger and Mr. W. K. Holmes at the other, carried on an extended discussion of ways and means of locating Behimer, and I have a copy of that exchange that went on over the wire, which refreshes my recollection of the fact that we
558 discussed various ways and means of locating him and where he might be found. We in New York said to those in Port Arthur, "Are you—this is Mr. Will K. Holmes talking, Are you and Tom doing everything you can to locate Behimer," Answer, "We have traced every source possible without any success so far."

The next suggestion we made was, "Suggest you follow up through parents and banker at Harlingen." Answer: "Will have a man go to that town tonight, also to the home of Behimer's father."

We advised them "If you get Behimer's address advise Dearborn either at office or telephone Summit 2072 or after Friday night Spring Lake 44-R." Mr. Holmes said, "All right." Then we said, "Better check hotel registers Galveston, Houston, Dallas." They answered, "We have checked hotels in Houston and Galveston and will check Dallas immediately." We asked, "What do you think of arranging to have Matthews trace him from Houston. Do not wish to have too many people in Port Arthur know we are looking for him." Tom Dellinger answered, "If can
559 be avoided prefer not to use Matthews but will try to locate him myself, don't think Matthews knows Behimer."

559 367 I don't recall who Matthews was.

This conversation was carried on not by long distance 'phone but by telegraph over private wire.

Tom Dellinger is dead.

Next our suggestion was, "Suggest Dellinger call on banker at Harlingen who arranged meeting between Behimer and Kerr." Whom I understood to be another representative of Universal.

560 Mr. Haight: May we stipulate right there that both Mr. Kerr and Mr. Olson are dead?

Mr. Von Holst: Yes.

Continuing: "Have you found if postoffice in Port Arthur has forwarding address". Then he asked him if he had taken any action on Dellinger's wire Monday advising him of Behimer's and Raymond Murray's disappearance. Raymond Murray was a lawyer formerly in our employ, and I believe was then practicing attorney in Port Arthur, Texas.

561 At the time of this wire I believe he was in the employ of the Universal Oil Products Company. In his answer "Behimer's father says that Behimer sent in his resignation to New York before he left ten days ago and that he doesn't know where he is but may be gone a month. Dellinger here, and will follow your suggestions in further efforts locate him," and Will Holmes asked if I am there, and the answer is "Yes", Dearborn speaking, "yes, we have tried Chicago and

other large cities and will continue to do so. Did he leave by train or auto?" The answer is "By train", Dellinger speaking, "I have an idea he is either in Kansas or Arkansas"; Dearborn speaking, "Please give me full name and address mother-in-law." Dellinger speaking, "Her name is Shackleton, 2727—5th street, but don't know her initial, suggest you do
368 not correspond with this lady at all as I know how Behimer was feeling when he left Port Arthur." This is Dellinger's suggestion to us, that we do not communicate with the lady. "Just learned Mrs. Behimer returned here from Harlingen, bought several
562 nice dresses and two or three pairs of shoes and left Friday for Houston, and told her to give out no information."

"Mrs. Behimer was to meet Mr. Behimer in Houston. Have had Beyt talk to Behimer's mother-in-law last two days but she won't tell anything. But can tell from actions she knows where they are. Will check up on telegrams and mail going from his home, but almost positive he is in Kansas City. His mail goes to his home here. His mother-in-law there but unable to get any information from her. His wife is with him. Have you any address in Kansas City to sug-
563 gest? No, but can possibly find out where some of his relatives are living. They are out of town on farms. He also has a friend out of Hot Springs, Arkansas." Dearborn speaking, "Dellinger should go ahead as quietly as possible, taking man with you if necessary. Before you leave for Arkansas and Kansas tell Mrs. Shackleton for me I have very important information Behimer should have at once for his own interest, would like her to transmit the message to Behimer and ask him to phone me." That last part was Mr. R. C. Holmes' message. Dellinger then says that he will go up again and talk to Mrs. Shackleton and will start out immediately to locate relatives and friends; soon as we have necessary information will hit the road. "In case any wires from road, should I code them?" Mr. Holmes told him to take the code book and code important words.

564 This was a telegraphic conversation; Mr. Holmes and I were present, also an operator, all of this was read to both of us as indicated by the messages.

565 369 We have a private wire for this, so it is convenient to send messages back and forth and it is not unusual to carry on a running exchange of this character. The telegraph operators at each end act as interpreters and pass on the messages as they are received.

566 Mr. Hall: We will admit that they made an earnest effort to locate Mr. Behimer for the period, whatever period Mr. Dearborn said it was.

The Witness: I think that indicates the nature of the exchange and the efforts were followed up and diligent effort was made at various cities to locate Behimer without success during the period from about the middle of August until we got the letter indicat-
567 ing that Behimer was in the employ of the Universal Oil Products Company at the end of September.

We exhausted every reasonable avenue of inquiry that we could think of, and probably would have continued longer to do so had we not then discovered that he was in the employ of the Universal and quit.

Mr. George D. White was an employee of The Texas Company in 1926 and 1927, and my recollection is that he was working on the high pressure furnaces and on doing special jobs of laying brick and adjusting burners and heaters, and so forth, for experimental cracking units. He was approached by some representative
568 of the Universal Oil Products Company, and White immediately communicated with Dellinger, telling him what had been said to him, and Dellinger reported it to me, as I recall, and then I contacted White personally and we arranged that White should continue to keep open the conversations that he was having with the Universal representatives, with the expectancy that that would be a good way to find out what was going on. That was in the summer of 1926 and the time I have in mind particularly. Mr. White continued the contact for a considerable period of time and
370 reported fully to me and then finally advised the representative of the Universal that he was in the employ of The Texas and would continue that employ.

569 So far as I recall right now, the principal reports were verbal. He reported what had happened verbally and may have written some letters, then he later summarized the whole thing in a written statement. I believe the statement was in the form of day-to-day

report. I think it reached me finally as a continuous diary report of what had gone on.

570 I now produce the written report to which I had reference. I also spoke of the verbal reports which he made to me.

Mr. F. P. Dodge, to whom these reports are addressed, was the general superintendent of the Port Arthur Refinery, and Mr. White was working in the refinery and, therefore, under his supervision. Attached as the first sheet to this report is an affidavit by Mr. George D. White. It is my recollection that the affidavit was prepared by me after discussion with White, and that he executed it in New York at my office. This report has been in my possession since it was made.

572 Q. I now hand you several documents which you have produced, and will you kindly state what each of those documents is and where they came from?

A. I have before me an affidavit of Maurice S. Beyt,
573 dated August 9, 1926. I recall receiving this affidavit at about the time it was made, in August, 1926. It has since been in my office.

I now produce a paper entitled "Statement of Maurice Beyt, Questions by Mr. R. J. Dearborn," dated Houston, Texas, August 2, 1926. This paper is a transcript of questions put by me to Maurice Beyt and his answers given to me, on or about the second day of August, 1926. Mr. Beyt signed the affidavit attached to the statement on August 2, 1926 in my presence, and my signature appears on the paper as a wit-
371 ness. This statement was transcribed by Mr. H. Tomfohrde, who was a notary public and secretary to Judge Robert A. John.

576 I hereby produce triplicate signed copies of a letter (DX 202) from M. S. Beyt to Mr. Otto Wannack, Houston, Texas, dated September 7, 1926, together with photostat copy of check for $100 made out to Otto Wannack, dated September 7, 1926. I received these copies at the time the letter was written and sent. They have since been in my possession. The original of that letter was, according to my belief, mailed to Mr. Wannack. I don't know where it is.

577 DX 202 reads:

"Port Arthur Texas.
Sept. 7, 1926.

"Mr. Otto Wannack,
Houston, Texas.

"Dear Sir:

"I am enclosing herewith, cashier's check for the sum of $100.00, which is to reimburse you for the one hundred dollar bill which you delivered to me at my
578 residence at 2609 Ninth street, Port Arthur, Texas, in the presence of my wife and Mr. Gunther Brunow, this being the entire amount received from you by me.

"I am returning this to you because it was paid for future service to be rendered you, and I have since concluded that I cannot perform same.

372 "I also beg to advise that I have declined to make the affidavit which you left with Mr. George D. White for me to sign. I have gone over this matter fully with the executives of The Texas Company, and the affidavit does not contain the truth in a great many substantial and material particulars, and I therefore cannot afford to sign same.

"The stationery delivered to me by mail from you which was to be used in furnishing you certain information from The Texas Company files and Experimental Work, has been delivered by me to the executives of The Texas Company.

"Yours very truly,
M. S. Beyt."

579 Mr. Thiess: Attached to that letter is a photostat of a check, it has the same exhibit number, a check for one hundred dollars dated September 7, 1926.

I hereby produce paper which is an affidavit of George D. White, dated August 31, 1926 and sworn to and subscribed before Eunice M. Rogers. This affidavit was prepared by me or under my directions, and I recognize the signature of George D. White, and also the signature of Eunice M. Rogers. Miss Rogers is a notary public and stenographer employed in my Port Arthur office, and attached to the affidavit (DX 203), and part of the exhibit, are envelopes addressed to Mr. George W. Withe, 1611—5th street, Port Ar-

thur, Texas, from S. Olsen, 14—77th street, Brooklyn, New York, and what appears to be a letter dated August 27, 1926, addressed, "My dear friend," unsigned. On the back of the letter the following words appear in longhand, "Please destroy for safety's sake," which appears twice.

580 These documents have been in my possession since the preparation of that affidavit. Mr. White attached them to the affidavit at the time the affidavit was made.

373 Mr. Thiess: I now offer in evidence the affidavit of George D. White and the attached envelope and letters just identified by the witness as Defendant's Exhibit 203.

Mr. Haight: We think, if your Honor please, if this
581 affidavit goes in, in lieu of White's testimony and I assume that having made the affidavit he would so testify, it would take us a little time to call him, and the affidavit can go in, in lieu of his testimony. But we do object to the admissibility of the letter as not properly identified, and your Honor can pass upon the admissibility of it later.

The affidavit (part of DX 203) reads:

"State of Texas, }
County of Jefferson. } ss.

"I, George D. White, a citizen of the United States, and a resident of Port Arthur, County of Jefferson, and State of Texas, being duly sworn, depose and state as follows:

"That on August 30, 1926, at 2:30 P. M. I received the attached unsigned letter, dated August 27, 1926.
582 This letter contained no heading but was addressed as 'My dear Friend' and closed as 'Your friend always.' From my previous dealings with Otto Wannack, which is shown in my several reports, and two telegrams that were sent to H. L. Kaufman in Houston, Texas, from Otto Wannack in New York City, dated August 27th, I have every reason to believe that the above identified letter is from Otto Wannack, a representative of the Universal Oil Products Company.

"The envelope in which this letter was received,

which is also attached, bears a return address of 'S. Olsen, 14—77th St. Brooklyn, N. York,' and is postmarked New York August 27, 1926. This envelope also bears the registry number of 226125 and is marked 'Return Receipt Requested'.

"George D. White."

"Sworn to and subscribed before me this 31st day of August, 1926.

"Eunice M. Rogers,
(Seal) *Notary Public in and for Jefferson County, Texas.*"

593 374 Mr. Von Holst: We would like to ask counsel for plaintiff if they will agree that the "S. Olson, 14—77th Street, Brooklyn, New York" on the envelope addressed to Mr. George White, in Defendant's Exhibit 203, is the S. Olson whom Mr. Hall said was in the employ of the U. O. P. at yesterday's session?

Mr. Hall: No, I know S. Olson was in our employ but whether that S. Olson that you have on there who wrote that on there, I don't know anything about him.

Mr. Von Holst: Do you know whether that was his address, Mr. Hall?

Mr. Hall: No, I do not. I know he lived in Brooklyn but whether that is the S. Olson—whether he wrote that or it came from him, I haven't the slightest idea.

Mr. Von Holst: May I ask if the plaintiff will check in their records, and see whether 14—77th Street, the number 14—77th Street, Brooklyn, New York, is the address of S. Olson, who was in their employ?

594 Mr. Hall: We will try to find out if he ever lived there.

I produce affidavits (DX 204) of T. G. Dellinger, Otto Behimer, G. D. White and M. S. Beyt with reference to the transfer of stationery, together with one longhand (DX 204A) and one typewritten letter (DX 204B) and a box of blank stationery referred to in the affidavits. One of the envelopes from this box, bearing the address P. O. Box 303, Beaumont, Texas, is DX 204C.

595 375 The affidavits were prepared under my instructions and I received them at the time or shortly after their execution. Since then they have been in my possession, together with the attachments.

DX 204A reads:

"5./11.26.

603 "My dear Friend:

"On my return, I send you over the typewriter; I had ordered 'elite type' from factory, but will not have that machine in about 10 days, will then send it out to you and you leave instruction to return in exchange for the new machine, the one you now have. Will you kindly inform me by return mail how you want the money in advance or each first of month, your retainer started from the first of May. I personally prefer your getting the retainer in advance, but you suit yourself.

"I am asking you if possible to furnish me all the names of men the Comp. has under consideration, pertaining to evidence establishing the correct date of the first experiment on jet. Have you a copy of the blue print made by E. T. Earnest where from Ch. D. made the first jet. If you can secure a copy, put on a price and I will mail you the money for same. I have not seen Brunow and I am not telling him anything, nor anybody else. With kindest regards to you and your family."

376 DX 204 B reads:

"4-22-26

"My dear Friend:

"I am taking this means of establishing again our past cordial relation, which were broken for reasons you know. I returned from a successful trip East, where I interviewed several ex-employees, also stopping in Houston for several days, seeing a party there. I run into Mr. Mc. at the Rice, he was not so glad to see me, in fact, he thought I was too persistent; well you know, my friend, one should make hay while the sun shines.

"I have a safe and attractive proposition to make to you and here it is: I will furnish you with stationery and typewriter, post office box 303 in Beaumont, for you to mail your letters to. Self-stamped and addressed envelopes, which require no sender's return address. Then address to box in Beaumont, use typewriter, and it requires no signature, in fact, I am enclosing a sample letter and envelope herewith.

"Now, my friend, listen to me. I take it for granted that your sincere friendship I still retain, needless I have to assure you again that I would not knowingly,
606 or willingly, bring upon you or your dear family harm.

"Your assurance that you only could do business with me, made me glad and it established a mutual confidence and friendship in each other.

"My friend, let's be above board in all our future dealings. I want you to help me and help I need. I promised my boss to deliver the goods and must make good my promise.

"Time is short and you can furnish me so much inside information with no danger of detection. For your troubles and your time devoted to the above I will send you $200.00 per month. This amount has nothing to do with the issue of the photographs; we leave that as it stood. Kindly drop me a line by return mail so we can get started without further delay.

"Please remember me to your charming wife and I wish to remain

"Your sincere friend,"

610 377 I hereby produce The Texas Company File No. 10,049B from the files of the Patent and Trade Mark Division of the Legal Department, subject: Otto Behimer, U. S. Patent 1,883,850. This portion (DX 205) of one of the files in my office pertains to an assignment from Behimer to The Texas Company, a copy of which is in the file. I believe the correspondence is self-explanatory. This is the agreement which I referred to yesterday which contained the agreement by Mr. Behimer to testify.

611 The assignment was executed by Mr. Behimer on December 19, 1932. The assignment was later recorded in the United States Patent Office under date of January 5, 1933, Liber C155, page 319, Transfers of Patents.

378 DX-205 includes the following:

Carbon copy of assignment;

612 Letter of November 25, 1932, from Donald H. Mace to Mr. Cooper;

Letter of December 1, 1932 from R. J. Dearborn to Mr. H. J. Halle;

Letter of December 22, 1932 from W. M. Behrens to Mr. Dearborn. These read as follows:

617 "Assignment

"This assignment made this ..... day of ....., 1932,

"Witnesseth:

"Whereas, I, Otto Behimer, of ....., in the County of .....; and State of ....., formerly of Port Arthur, in the County of Jefferson and State of Texas, have made certain inventions * * *.

620 "Now, Therefore, be it known that for and in consideration of the sum of One Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, I, Otto Behimer, hereby ratify and approve the aforesaid assignments to The Texas Company, a Texas corporation, executed by me * * *.

622 and

"I agree that I will communicate to said The Texas Company, a Delaware corporation, or its representatives all facts known to me respecting said improvement, whenever requested, and testify in behalf of said The Texas Company, a Delaware corporation, in any legal proceeding, sign all lawful papers, execute all divisional, continuing and reissue applications, make all rightful oaths and generally do everything possible to aid said The Texas Company, a Delaware corporation, its successors, assigns, and legal representatives, to obtain and enforce proper patent
379 protection for said improvements in the United States and all foreign countries.

.....

"State of .....,
County of ..... } ss.

623 This ..... day of ....., 1932, before me, personally came the above named Otto Behimer, to me personally known as the individual who executed the foregoing assignment, who acknowledge to me that he executed the same of his own free will for the purpose therein set forth.

.....

Notary Public."

624

(Stamped)
"Received
The Texas Company
Patent Division
November 26 1932
RJD

"November 25, 1932

"Mr. Drury W. Cooper
233 Broadway
New York, New York

"Dear Mr. Cooper:

Re: Behimer Patent No. 1883850

"With reference to your letter of October 28, 1932 to Mr. Dearborn respecting the matter of the assignment of the above patent, I am attaching hereto a rough draft of a proposed assignment * * *. This
631 new assignment has been drafted to cover not only the ratification and approval by Behimer of his previous assignments and his acknowledgment and affirmation that said assignments transferred his entire right, title and interest, but also covers his assignment, release and quit claim with respect to the entire situation, including divisional and continuing applications, etc., foreign rights, claims for profits and damages and an agreement to testify, sign all lawful papers, etc. and do everything possible to obtain and enforce patent protection in the United States and all foreign countries.

"Of course, the last mentioned commitments by Behimer go somewhat further than some of the original assignments by him, but I believe it is desirable to include them in order to clear up the entire situation, provided he is willing to execute such a paper at
632 this time.

"Yours very truly,
"(Signed) Donald H. Mace."

DHM:SLC
cc RJD NAB"

634 380 "December 1, 1932.

"Mr. H. J. Halle,
Universal Oil Products Co.,
50 Broadway
New York City.

Behimer Patent No. 1,883,850

"Dear Mr. Halle:

"You will, of course, recall that the original application which has matured into the above patent, together with several other applications, were filed jointly in the names of Holmes-Manley-Behimer and that all proper legal steps were taken to exclude Holmes and Manley from these cases which, after careful study, were found to be sole inventions of Behimer.

"Assignments were made by each of the three parties, Holmes-Manley-Behimer, to The Texas Company and all these assignments have been duly recorded in the United States Patent Office.

"On taking up the above patent for action against infringers, Mr. Cooper recommended that the title be somewhat simplified for purposes of litigation by a new direct assignment from Behimer in the form enclosed.

635 "We attach the original and two extra copies for your use and if you and your attorneys see no objection, we shall very greatly appreciate your obtaining Mr. Behimer's signature and return the same to me.

"Your early reply will be appreciated.

"Yours very truly,
"Signed: R. J. Dearborn.

"RJD.MH
"Enc.
"B1.c.DHM"

636 "Universal Oil Products Company
Owner & Licensor Dubbs Cracking Process
Chicago, U. S. A.

(Stamped)

50 Broadway
New York,

"Received
The Texas Company
Dec. 23 1937"

December 22, 1932

"R. J. Dearborn, Esq.,
The Texas Company,
135 East 42nd Street,
New York, N. Y.

"Dear Mr. Dearborn:

"We return to you herewith the confirmatory 381 assignment of Mr. Otto Behimer to The Texas Company, which was enclosed with your letter of December 1st.

"Yours very truly,
"W. M. Behrens
"W. M. Behrens

"WMB-M
"Encl.
"DHM from
"RJD 12-28-32"

641 DX-205 also includes a letter of October 27, 1932, which I wrote to Mr. Cooper. In the last paragraph thereof, I make the statement, "In view of proposed suits for infringement of this patent," referring to the patent 1,883,850, I do not recall now what suits I had in mind then, but some time after this date suits were filed, as I recall, against a number of infringers. I believe none of these contemplated suits were to be brought against licensees of Universal Oil Products Company.

642 As of October 27, 1932, there were no licensees of Universal that were not already licensed or had immunity under The Texas Company's patents and that immunity was obtained as a result of the January 6, 1931 contract that I have referred to. The January 6, 1931 settlement gave immunity under this patent or

the invention on which it is based to all licensees of the Universal Products Company who were licensed at that time. That settlement also gave immunity under the Universal patents to The Texas Company and to its licensees who were licencees on January 6, 1931.

643 Licenses were granted under these patents either directly by The Texas Company or by the Gasoline Products Company after 1931 to licensees who had no immunity under the Universal patents. And such licensees were therefore subject to suit under the patents owned by the Universal Oil Products Company.

I recall the case of Universal *vs.* Dickey in which the Universal Oil Company sued a licensee of the Gasoline Products Company subsequent to this 1931 con-

643 382 tract. The Dubbs patent 1,392,629 was involved in

644 this Dickey litigation. In the answer filed in the Dickey case I recall that the Behimer invention of clean circulation was set out as a prior invention in one defense.

The Dickey case was brought on July 25, 1934. I believe that in this 1931 agreement which I have referred to, there was no agreement made with respect to the settling of interferences, including Interferences

645 49,355 and 55,610. Interferences 49,355 and 55,610 were settled subsequently to January 6, 1931. They were terminated by the filing of concurrent disclaimers by C. P. Dubbs in Interference No. 55,610 and by Otto Behimer in Interference No. 49,355. It is my recollection that both parties to the settlement of those interferences were fully informed as to the facts.

646 What I mean is that there was no discussion at that time of the facts: They were known to each of the parties. I do not recall that we went into any dates pertaining to the Carbon P. Dubbs preliminary statement because we obtained the disclaimer in 55,610. It is not correct that the disclaimers were filed after a discussion of the proofs by the respective interfereants with regard to the preliminary statements on which the

647 various acts of the inventions were based. The settlement was made after considerable discussion, but we did not review the specific dates of the Universal. The dates of the Behimer case were known to each party.

Q. At that time did you disclose to the Universal the records regarding Behimer's early experimental

work on which you expected to later establish Behimer's earlier invention?

A. I do not recall. I do not understand what you mean by "disclose". They had Behimer in their employ, and he certainly was familiar with all the facts.

647 383 Q. Well, what I have in mind, did you show the Universal Oil Products Company the documents which The Texas Company had available and with which it expected to prove the dates alleged in the Behimer preliminary statement, prior to the filing of the desclaimer?

648 A. Not in detail, so far as I recall.

I do not recall whether we showed them any of them. The records and proofs with reference to the Behimer case have been disclosed in detail to the Universal Oil Products Company representatives, since the Universal Oil Uroducts Company on December 1, 1937 acquired the right to grant licenses under the Behimer patents. That is the first time that I recall that they were gone into in that detail.

649 As a basis for filing the Behimer disclaimer, which I have referred to, I did not see and have before me the proofs and records on which the party Dubbs intended to rely.

Q. Will you state whether you filed the disclaimer and settled the Interference 49,355, because or partly 650 because Mr. Otto Behimer was hired away from The Texas Company and employed by the Universal Oil Products Company?

A. No.

Q. Will you state why you did settle the interference by the filing of a disclaimer?

A. We filed the disclaimer because we regarded the claims which were taken from the Dubbs patent and which Behimer disclaimed as clearly and definitely limited to a process of converting relatively heavy into light hydrocarbons, consisting of passing a stream of oil through a zone where the oil is heated to a cracking temperature but without substantial vaporization. With this limitation in the claims, as we understood them, we did not regard the claims of value, and we simultaneously obtained the disclaimer from Mr.

650 384 Carbon P. Dubbs of the clean circulation claims in Interference No. 55,610, which we did regard of value as covering clean circulation.

651 The reason that I did not regard the Dubbs claims as having any value, was because The Texas Company in its investigations ascertained that in our operations vaporization did take place simultaneously with the cracking in the zone where the heat was applied.

Q. In what sense do you use vaporization in your last answer?

652 A. I used vaporization in the ordinary sense of the
653 production of vapors. That is the interpretation we placed upon the language of these claims at all times. I may say that I am perfectly aware that the Court in the case of Universal *vs.* Root interpreted the claims broadly, but I think he probably did so because he did not have before him the Behimer prior invention. Under the terms of the December 1, 1937 agreement between The Texas Company and Universal Oil Prod-
654 ucts Company, all of the infringement suits brought by The Texas Company or brought by the Gasoline Products Company against licensees of the Universal Oil Products Company have been or will be dismissed, and as a result of that agreement the suits brought by the Universal Oil Products against Gasoline Products' licensees and Texas Company's licensees were, or will be, also dismissed.

By this 1937 agreement no licensee of Texas or Gasoline Products Company obtained immunity under the Universal Oil Products Company's patents unless for such operations as they have accounted at the rates normally charged by the Universal Oil Products Com-
655 pany for licenses under their patents. Under the terms of the 1937 agreement Universal acquired generally the right to grant licenses under the cracking patents of Texas and Gasoline Products Company to enable them to grant licenses to new licensees.

656 385 DX-206 is a certified copy of the Dubbs application Serial No. 266,396, of which the Dubbs application Serial No. 6060 was a division and was involved in the Interference No. 55,610.

657 DX-220 is an exemplified copy of the Bill of Complaint and Answer—supplemental bill and answer, in the case of Universal Oil Products Company *versus*

Dickey Refining Company, defendant, in Equity No. 822-N in the District Court of the United States For the District of Kansas. Those are the pleadings referred to in my testimony and the case in which the Universal Oil Products Company had sued a Texas licensee, and it will appear from the answer here the only defense set up by the defendant was the prior invention by Behimer.

386 *Cross-Examination by Mr. Hall.*

658 The letter dated January 6, 1928 (PX Dearborn A) addressed to Otto Behimer and signed by myself, was contained in a file entitled "Correspondence between The Texas Company and Behimer", and is my file copy of a letter which I wrote to Behimer on that date. I submitted to him therewith for execution, several applications for patents covering inventions which I stated had been made by Behimer during the period he was in the employ of The Texas Company. There were seven cases involved and the docket numbers were given in the letter.

659 The letter addressed to me and signed by Otto Behimer dated February 4, 1928 (PX Dearborn A) is a letter which I received from Behimer on February 6, 1928, transmitting the papers which I had requested him to send in my letter of January 6, 1928. He had executed the papers and returned them to me and I acknowledged receipt of the papers with greater particularity in my letter to him of February 6, 1928, (PX Dearborn A), my file copy of which is now produced.

Behimer complied with my request to execute other applications or documents submitted to him. Other
662 than this period of about six weeks which commenced in August, 1927, I have never experienced any difficulty in reaching Otto Behimer, and except for this period, although I didn't always know his whereabouts, we knew where he could be reached and felt that we could reach him by subpoena at any time after September, 1927.

663 387 The office letter in the file of interference 49355, DX 178, shows that throughout that entire period of six weeks and longer, all proceedings were suspended, so that even though I might have reached

Behimer during that six weeks period it would not have been possible to use him as a witness. Behimer's absence during this six weeks period did not in any way prejudice The Texas Company in the determination of the question of priority of invention in either of the interferences to which I have referred.

The Texas Company made records, as the work progressed, of the work done by Mr. Behimer or his associates in connection with the subject matter of these interferences, and had very complete, careful sum-
664 maries. These records, to the best of my knowledge and belief, are entirely complete and undisturbed.

The Texas Company has at all times retained records and witnesses available which, in my opinion are complete and sufficient to prove its case in these interferences. Nothing that the Universal Oil Products Company did, so far as I am aware, took away or destroyed any of our original records or documents. The Universal Oil Products Company did endeavor to get our records and ascertain the facts during the period concerning which I have already testified.

The Texas Company has had in its employ at all
665 times and available to it witnesses familiar with the work done by Behimer while he was with The Texas Company and it is my opinion now and has been at all times that we were able to make our complete proofs without calling Behimer.

665 388 I have always reposed complete confidence in the veracity of Behimer and have so stated on many occasions.

I came in contact with Mr. Thiess on about November 1, 1936 in connection with this work done by Behimer.

666 A subpoena was served on me personally and on several other executives of The Texas Company calling for our appearance and the production of all records pertaining to the early Behimer work. I immediately communicated with Thiess and suggested that we confer with a view to our making the information available in a reasonable time and agreeing to produce the witnesses without being forced to meet the early dates fixed in the subpoena. This was discussed in the fall of 1936 in Chicago where Benjamin B. Schneider and I met with Thiess and others at which time we worked out an agreement which was

reduced to writing. The subpoena was in connection with the case of *Universal* v. *National*, then pending in the District Court of Kansas.

667 Pursuant to our agreement, Thiess and one or two of his associates contacted Messrs. Burgess and Mace of Gifford, Scull & Burgess, who were attorneys representing The Texas Company in these matters, and at my request they were given full access to all of the records of The Texas Company and were given permission to meet with and discuss these matters with the witnesses who were familiar with the Behimer work. These contacts continued over extended periods and Thiess and/or his associates went over the

667 389 records in New York and interviewed various witnesses at Port Arthur, Texas, and prepared outlines of proposed testimony which these witnesses would give in establishing the Behimer inventions, and the work done by The Texas Company in connection therewith.

These contacts took place immediately after our agreement (PX Dearborn B) was entered into in November, 1936, and access has been had to our records and the witnesses on different occasions since that time.

668 The document which you show me is a copy of the subpoena which was served upon me in 1936.

676 After examination of the records and interviewing the witnesses Thiess expressed himself as satisfied that proof could be made of the priority of Behimer in the clean circulation invention. My best recollection is that this was early in 1937.

The availability of Behimer as a witness was dis-

677 cussed with Thiess. The question which we had primarily under discussion was that of subpoenaing or calling Behimer in this matter. This question of policy was: would it be more advantageous for The Texas Company to call Behimer as a part of our case, or to endeavor to take what advantage we could of the fact that he was in the employ of Universal Oil Products Company? At that time there were pending, as I recall, suits by The Texas Company for infringement of the Behimer patent against several licensees of the Universal Oil Products Company.

390 I told Thiess of having seen Behimer at Harlin-

678 gen during the last of February or the first of March, 1937; that he seemed to be friendly; and that

he had told me he had made a statement to Universal Oil Products Company of the facts about his early work, which statement he believed was exactly in accord with the statement he had made and signed for The Texas Company prior to the time he left our employ. It was my understanding that Thiess was aware of the fact that Behimer was in the employ of the Universal Oil Products Company, located at or near Chicago, and could be reached. I am sure that I told Thiess that we believed Otto Behimer to be absolutely honest and would tell the truth if called as a witness.

679 The action taken by The Texas Company in settling the interferences 49,355 and 55,610, was in no way brought about or influenced by anything which Universal Oil Products Company had done in hiring Behimer or endeavoring to obtain copies of The Texas Company records.

I never deemed that priority was awarded to Dubbs except formally with reference to the claims in issue in 49,355, priority simultaneously having been awarded to Behimer in 55,610, and both awards being based entirely on the disclaimers which were simultaneously filed by Behimer in one case and Dubbs in the other.

680 None of the attempts ascribed to Universal to obtain copies of our records or to obtain information from our employes, or the hiring of Behimer or the
680 391 hiring of Beyt had anything to do with our disposition of the interferences.

I submitted to Behimer a proposed amended preliminary statement (DX 197) in interference 55,610 and he declined to sign it for certain reasons.

681 We not only knew we had the right if Behimer did not file the statement, to file such statement on our company's own behalf, but we did so without waiting for the final answer because it was considerably delayed. We proceeded at once to file a statement signed by an officer of The Texas Company.

We learned in June, 1926, of efforts, which we ascribed to the Universal Oil Products Company, being made to get copies of our records having to do with the Behimer early work. It is my present recollection that this matter was not taken up with any officer of the Universal Oil Products Company, except as a part

of discussions of possible settlement. The files do not reveal anything on this point.

The discussions of settlement were very protracted and extended over a number of years, finally culminat-
682 ing in the January 6, 1931, settlement. The general discussions of settlement extended over several years and repeatedly broke down and were renewed.

XQ. 35. But certainly substantially contemporaneously with these activities that you learned of, in the direction of obtaining copies of your records, about that time and contemporaneously with those matters, that was not brought to the attention of any officer of
682 392 the Universal Oil Products Company, was it?

A. It is my recollection that Mr. C. P. Dubbs was involved in it, and he was contacting with Otto Behimer; but so far as I know, The Texas Company has no communication addressed to any officer of the Universal Oil Products Company.

683 I knew at that time that Frank L. Belknap was in charge of the general patent matters of the Universal
684 Oil Products Company and I knew him. During the period of these activities we were not in contact with Belknap in any way that I recall. I knew that he had an office in Chicago.

684 393 I permitted the examination of the papers or records of the work done by Behimer, or on his behalf, in connection with the inventions involved in
685 the interferences by other persons who were interested in showing the invalidity of the Dubbs patent 1,392,629. Dean Edmonds, on behalf of his client, The Cities Service Company, or one of the affiliated companies of The Cities Service, requested permission to examine these records and this permission was given him. He either personally or through one of his associates, has examined these records since receiving that permission.

The position of The Texas Company, and my own position, has been at all times that we are not suppressing any facts, and that any reputable person or corporation who requested the facts and who suggested that they might file a subpoena would receive the papers. The Texas Company certainly did not wish to volunteer the giving up or broadcasting of evidence which it considered would be of great value to it in connection with the early work of Behimer, but it cer-

tainly has never taken the position that it was either desirous or willing to suppress it.

The fact that I am under subpoena does not indicate
686 that I am in any way unfriendly to Thiess or to his client. The Texas Company and I are both neutral in this matter and so far as we are concerned it is a question of fact entirely and we are not desirous or willing to suppress the facts with reference to this clean hands issue, any more than we were with
394 reference to the other issue. I am personally very friendly with Thiess.

687 As to whether I exacted from Thiess an obligation to make full use of the papers and persons and proofs bearing upon the work of Behimer and his associates related to the interferences to which I have referred, the agreement which I had with Thiess is embodied in the contract which has already been offered (PX Dearborn B). That agreement fully answers the question as to what he agreed. The Texas Company and I are primarily interested in ensuring that the Behimer proofs are set out to the best possible advantage irrespective of what effect they might have on any other patent. We felt that Thiess was honest and able and would handle the situation to the best of his ability provided this agreement were made.

687 395 *Redirect Examination by Mr. Thiess.*

688 It is true that I have known Mr. Hall for many years and am very friendly to him.

As a result of the 1931 settlement The Texas Company, in addition to the licenses already referred to and the immunities received $3,000,000 face value of B notes of the United Corporation. That holding corporation was afterwards merged with the Universal Oil Products Company. The Texas Company does not still hold these notes.

689 In connection with Behimer application Serial 253,257, a supplemental oath was submitted for Mr. Behimer's signature about September 11, 1934, and that was executed and returned to us shortly thereafter. In connection with Behimer application Serial 253,259, a preliminary statement was submitted in October, 1934, and was executed by Mr. Behimer and returned to us at about that time.

Now in connection with the same application, a supplemental oath was submitted to Mr. Behimer and executed by him and returned to us in August, 1937.

An assignment which has already been produced and marked as an exhibit, was submitted and executed by Mr. Behimer December 19, 1932, in connection with the principal clean circulation cases.

690 The preliminary statement executed by Mr. Behimer was in connection with Interference No. 69,347, involving Behimer application Serial 253,259, and entitled, "Process for Distilling Pressure Tar". This Behimer application matured into Patent 2,095,963. In giving this information I have referred to a letter dated January 10, 1938 addressed to Mr. J. H. F. Leonard, of the Universal Oil Products Company, 30 Rockefeller Plaza, New York, and signed by Pike H. Sullivan. Pike H. Sullivan is patent counsel for the Gasoline Products Company.

690 396 Mr. Leonard, of the Universal Oil Products
691 Company requested me for permission to check through records on the correspondence between Texas and Universal pertaining to the papers submitted for Behimer's signature, and I authorized Mr. Sullivan to give him the information. Some of the communications which are referred to in this letter were addressed to Mr. Behimer, and some of them were addressed to the Universal.

The supplemental oath to which I have referred in Behimer application Serial 253,257, was sent to Mr. Behrens by Mr. Mace under date of September 11, 1934.

692 Mr. Behrens is an attorney in the employ of the Universal Oil Products Company. The preliminary statement in the Interference 69,347 was forwarded to Behimer by Mr. Donaldson under date of October 9, 1934, and, after execution, was returned by Mr. Behrens.

Under date of June 30, 1937 Mr. Donaldson, one of the attorneys working for the Gasoline Products Company, forwarded a supplemental oath to Mr. Lee J. Gary, of Chicago, one of the attorneys for the Universal Oil Products Company. Mr. Gary returned the executed paper on August 19, 1937.

We have been unable to find any other communications that we had either directly or indirectly with

Mr. Behimer regarding papers and applications subsequent to the date February, 1928.

693 I consider the Texas Company was not in any way prejudiced with reference to the matters in controversy in the interferences to which we have referred here by Behimer's six weeks absence immediately prior to the time that he wrote me and told me that he had entered the employ of the Universal Oil Products Company, and I believe I have so testified.

397 The Texas Company, and particularly Mr. Holmes, the president, and I, were doing our utmost to get in contact with Mr. Behimer during that period because Mr. Behimer was one of our best re-

694 search men on cracking matters and we were going ahead with many other inventions and improvements and developments and were not desirous of losing his services from The Texas Company, and felt that if we could get in touch with him in time that we could convince him that his interests lay in staying with The Texas Company.

Prior to the time that Mr. Behimer left The Texas Company he had been in conference to a considerable extent with The Texas Company lawyers regarding his early work, and some time before he left the employ of The Texas Company he had in every way assisted and helped us in the preparation of statements covering every detail of the work which he had done; executed all papers submitted to him, and did everything that he could to leave us in possession of every fact pertaining to his early work.

The stage of taking testimony in any of the inter-

695 ferences had not been reached, and I would say that the question of policy as to just which witnesses we would use had not at that time been decided. I believe, however, that we, at the time he left, contemplated that he would be one of those who would testify.

I believe my testimony has indicated the facts with reference to our ability to prove our case without Mr. Behimer and as to the question of policy whether we would call him by subpoena or not, after he left the employ of The Texas Company. Had he remained in the employ of The Texas Company and had the time arrived to take his testimony, the question would then have been decided on its merits, and I have

already stated that so far as I can now see, we probably would have called him.

696 398 I do not recall whether it was two months or a longer time before Behimer left our employ that the question of changing the joint applications made out in the names of R. C. Holmes, F. T. Manley and Otto Behimer to the sole application of Otto Behimer was decided and the applications changed, but it was a relatively short time before he left our employ and Mr. Behimer re-executed all necessary papers in that connection.

I recall very distinctly that the proofs of the critical dates pertaining to the Behimer invention have all been very carefully gone over and that we have clearly
697 and definitely reached the conclusion that we can make proof of all necessary dates without calling Behimer as a witness. I do not recall now of any records which could not be proved without Behimer.

Q. I will ask you whether you remember whether or not a number of typewritten cards on which Behimer summarizes the work which he did were in the files of The Texas Company, and ask you whether these cards could be proved without Mr. Behimer?

A. I do not recall the cards.

Q. Now, as a matter of fact, Mr. Dearborn, would not the proof of this priority have been greatly simplified if Mr. Behimer had been in the employ of The Texas Company and could have been called to testify as the man in charge of this work as to what he did when he was conducting and operating the experiments, and in connection with his construction work and his early sketches?

A. I believe my previous answers have given you all the facts that I can give you with reference to that application. I do not now see how we can simplify, to any extent, the proofs. They are definite proofs
698 and have to be made by all the witnesses avail-
698 399 able. It is a question entirely of whether it is necessary to call every witness that knows about it or whether you call part of them. If Behimer had not gone over all the matters in such great detail with us before he left the employ, why, I think we would have been embarrassed, but he did go over every one of them in great detail with us before he left and left a statement summarizing the general

situation, which was a guide to us, and I can't see now how his presence would greatly simplify the situation at all.

Q. Then it is, as I understand it, your present position that at the time that Mr. Behimer was hired away, notwithstanding the fact that he was the director and man in charge of this work, you were not interested and did not feel that you were prejudiced because this man was hired by your adversary in these interferences on clean circulation?

699 A. About the only additional light I can throw on the situation, I think, in answer to your question, is that shortly after Behimer left our employ I advised our executives that in my opinion the fact that he was in the employ of our antagonist in the interferences might well inure to our advantage rather than to theirs. I felt that the Universal Oil Products Company would be embarrassed by the fact that they had Behimer in their employ if the issues of the interference were pursued. Mr. Behimer is not now in the employ of The Texas Company. There is no contract, oral or written, between Mr. Behimer and The Texas Company at the present time.

DX 207 is a duplicate of the provisions of the
700 subpoena which was attached to the agreement (PX B).

711 400 Q. Do you remember whether or not, after my associates had gone over these records, that I then had a meeting with Mr. Burgess and with you, in which I outlined the witnesses that I thought might be desirable to call, and asked whether that would be satisfactory within the terms of the agreement to make the complete proof?

A. Yes, I recall that meeting.

Q. And do you remember that in that discussion was the first time we talked about Mr. Behimer and the advisability of calling him, and whether we could reach him, and that it was decided not to call him because as an employee of our adversary, the Universal Oil Products Company, he might color his testi-
712 mony so as to make it more favorable to Universal Oil Products Company?

A. I recall definitely the meeting that you refer to, and I recall the discussion which I have already referred to in my testimony, of the question of policy

as to whether we should endeavor to reach Behimer and call him, and I also recall very definitely that on numerous occasions and, as I recall it, on that occasion, we told you that Otto Behimer was honest and would tell the truth and we had no fear that he would testify otherwise, if called. That has always been my belief, and I have expressed it many times to many people.

Q. And you have no recollection at all of the statement to the effect that Behimer in the employ of the Universal might color his testimony favorable to them?

A. I recall that I did not intimate that he would color his testimony in any way. I am very positive that I have always taken the view that Behimer was honest and would tell the truth.

712 401 Q. Do you have any recollection of my saying so?

A. I do not have any such recollection. As I recall it, it was shortly after that that I got in touch with Behimer to find out just what his frame of mind was and his status, as a further aid to determine whether our policy would change.

Q. And at the time that we had that meeting did you or did you not tell me that you had not seen Mr. Behimer to talk to since he left The Texas Company?

A. I am sure I did not say that because I recall several instances when I have seen him, but I had not seen him for some time.

Q. And it was as a result of that meeting that you later called on him at Harlingen to ascertain his state of mind with respect to the subject matter?

A. I don't believe it was as a result of that meeting but it was a result of the apparent imminence of this issue getting into court or getting heard.

402 Subsequent to Mr. Behimer leaving the employ of The Texas Company, and in a paper dated December 22, 1928 in Application File No. 263,562, the
714 following letter was written to the Commissioner of Patents:

"Honorable Commissioner of Patents,
Washington, D. C.

"Sir:

"The Texas Company, assignee of any right, title and interest in and to the above identified application for Letters Patent of the United States, by reason of an assignment duly recorded in the United States Patent Office in Liber K-107, Page 428 of the Assignment Records, hereby respectfully requests that in view of the present employment of the inventor, Ottó Behimer, by the Universal Oil Products Company of Chicago, Illinois, the said Otto Behimer and/or his attorney
403 or attorneys shall be hereafter excluded from any access whatsoever to the files of the Patent Office relating to the prosecution of the above-entitled patent application so long as the same remains in pendency before the Patent Office. This request is made in accordance with the practice set down in the case of *In re The Kellogg Switchboard & Supply Company*, 223 O. G. 2310.

Respectfully submitted,
The Texas Company,
by N. S. S. Rodgers,
Vice-President.

Approved:
R.J.D."

715 I recall preparing and approving the original document of which this is a copy. The signature, however, is Mr. W. S. S. Rodgers, improperly initialed on this copy. I approved a similar letter under date of December 22, 1928 in File Wrapper of Application No. 630,242, DX 177. The initial here also is wrong.

The documents which I have produced in response to the subpoena on the issue of unclean hands were first shown to Mr. Thiess on or about January 15, 1938 by Mr. Brady Cole, attorney for The Texas Company, who then had the papers in his possession. The
716 papers which have been thus produced, were all produced in strict conformance with my interpretation of the subpoena duces tecum that was served on me.

There are plenty of files of Ths Texas Company that I did not produce. As to this subject matter we have

produced everything pertaining to the unclean hands issue so far as we have been able to find them. Shortly after the papers were shown to Mr. Thiess Mr. Cole showed them to the counsel for the Universal Oil Prod-
717 ucts Company, at my request.

404 *Recross Examination by Mr. Hall.*

717 I saw Behimer on or about March 1, 1937, in Harlingen, Texas. He told me that he had made statements to the Universal Oil Products Company covering all that he could possibly recollect of his connection with the early work; that he believed that those statements were exactly in accordance with the statements that he had previously given to us; and that he was under a contract of employment of some character with Universal Oil Products Company which would continue until January 1, 1938. He did not indicate whether he would be free to testify for me. I assumed from what
718 Behimer told me we could reach him by subpoena at any time. My recollection is that I told Thiess of having seen Behimer and about our conversation.

A great part of the papers which I have produced have been offered in evidence by Thiess on what has been termed this unclean hands issue. There are some that were not offered.

719 Messrs. Brand and Neuman examined the records of The Texas Company in connection with this Behimer matter and spent a number of weeks going over these papers.

405 *Re-redirect Examination by Mr. Thiess.*

719 Mr. Thiess: In review of the recross by counsel for the plaintiff, I now introduce in evidence as DX 208 and 209 the files marked "File No. 2 and File No. 3, Inter-Company Correspondence," consisting of a number of letters.

724 Mr. Hall: Objected to as improper proofs on re-redirect examination, as not proven and as not relevant or material to the issue of so-called unclean hands.

725 I had examined the correspondence in Files Nos. 2 and 3, DX 208 and 209, and find that those letters were

all taken from my file and were received by me or mailed out of my office by me on or about the dates they bear.

406 *Re-recross Examination by Mr. Hall.*

725-6 The letters which I have just identified contain various statements of facts which were received in the regular course of The Texas Company's business and I believe they are correct, but I have no personal knowledge of many of them.

726 407 WILLIAM MALCOLM STRATFORD,* 60 East 96th Street, New York, New York:

Direct Examination by Mr. Thiess.

I am assistant patent counsel for The Texas Company. I have been employed in the Patent Department of The Texas Company since August 1, 1924. In the
727 spring of 1927 I was technical assistant to the patent attorney of The Texas Company. I was located in Port Arthur, Texas, at The Texas Company's refinery there.

I was familiar with the work being done by Otto Behimer. I had access to and at times I had supervision of some of the work which Otto Behimer was doing.

I know a Mr. S. Olsen. I first met Olsen on the night of April 6, 1927.

728 On April 7th, the day following my conversation with Olsen, I wrote a letter (DX 210) addressed to Mr. Dearborn. The signature to this letter is in my handwriting. I have an extremely hazy recollection of seeing Mr. Olsen, and without reference to the letter I have no recollection whatever of the details of our conversation. I am certain that the facts which I wrote down in this letter were correct.

* Deposition taken on behalf of defendant on February 24, 1938.

729 408 DX 210 reads in part:

"Port Arthur, Texas,
April 7, 1927

D #13,441

"Mr. R. J. Dearborn,
New York City.

"Dear Sir:

"Mr. Olsen, representing the Universal Oil Products Company, called on me last night. We talked about one-half hour, Olsen coming immediately to the point that he wanted a photostat copy of any records and correspondence having to do with our early experimental work on cracking and which are of interest in connection with the pending interferences. Olsen
730 stated that his company had The Texas Company beaten easily but that their attorneys wish to make the matter even more conclusive and accordingly wanted to get everything that they possibly could. He said that he was prepared to make any necessary financial arrangements and would hand me the first $2000 immediately upon my agreeing to work with him. He assured me that I could remain in my present job and draw a good retainer from his company. I of course informed Mr. Olsen that I could not do anything for him and that he was wasting his time.

"Olsen accordingly and tactfully changed the subject then and I spent rather an interesting half hour questioning him on his work. Olsen said that he had been working with Mr. Dubbs since 1919"—

Mr. Haight: We object to that, if your Honor please. This letter goes in, you understand simply as the witness' testimony because he said he could not recollect. Now he is proceeding to testify as to past transactions, and that comes within the ruling that your Honor has heretofore made.

The Court: I think so.

731 Mr. Thiess: Let us put it in subject to the objection.

Mr. Haight: No, I think this particular stuff ought not to go into the record because it comes within the ruling that your Honor has made, and the only way it can stand is as an offer on his part to prove, the same

as yesterday, what you are prepared to prove because it is all a statement of past transactions.

409 Mr. Von Holst: In this particular instance he is the agent that you admit was in there talking with Stratford.

The Court: Yes, telling of his prior exploits.

Mr. Von Holst: That is not an exploit. He says he had been working with Dubbs since 1919 making models and other things.

The Court: His agency cannot be proved by his statement that he was an agent.

732 Mr. Haight: We admit that he was in our employ, but that does not permit him to try to use his statements of prior transactions.

The Court: No it does not. I thought Mr. Von Holst was contending that this was admissible to prove agency, which it is not. But I do not think any of this letter following the part that has been read is admissible in evidence, under the rules of the Supreme Court.

733 Mr. Von Holst: Then, your Honor, the first page is in evidence?

734 The Court: The first page is in evidence.

Mr. Von Holst: Your Honor sustains the objection to the second page because that is all a recital of the prior dealings?

The Court: Yes.

Mr. Von Holst: Very well, I submit that on page 3 the letter (DX 210) again becomes competent, under your ruling.

735 "At the beginning Olsen had taken the attitude that The Texas Co. was putting a crooked deal over on the Universal Co. and that I should take it upon myself as a moral duty to straighten the whole thing out. Now he changed his argument and said that we were both working for large corporations both of which were trying to put over a crooked deal on each other and it was merely a question of 'dog eat dog.' Therefore, why should we (Olsen and myself) not get something out of it. I explained to Olsen that my position was dictated from a consideration of self respect regardless of any issue between corporations and Olsen very tactfully changed the subject again. However, he apparently was not entirely convinced and reminded me that the time was getting short if I was to make any money out

of this proposition, from which it was assumed that
410 he referred to the taking of testimony set for the middle of this summer.

"I am calling Mr. Dellinger's attention to the presence of Olsen in this vicinity although I think it very
736 likely that he has left by this time.

"Yours very truly,
"W. M. Stratford."

Mr. Thiess: Counsel for the defendant offers the balance of the letter not read, under Equity Rule 46.

The Witness: I have produced a copy of a letter (DX 211) dated September 10, 1926, which I wrote to Mr. R. J. Dearborn and which describes a meeting which I had had with a man named Harry Brunow.

737 Brunow was a man who worked in the laboratory of The Texas Company at Port Arthur at a time when I was employed there as a Chemist, and later when I was in the Patent Office he was a sort of an unskilled mechanic, I guess you would call him, but I have known him for a number of years. I recall talking to Brunow after having seen this letter, but before having seen the letter I had no recollection whatever of it.

738 I am certain that the facts set down in this letter by me on September 10, 1926 are correct facts and were my best recollection of this meeting written down on the day following the meeting. I obtained these letters from The Texas Company files.

740 DX 211 reads:

"Port Arthur, Texas, Sept. 10, 1926
"D #13,441

"Mr. R. J. Dearborn,
New York City.

"Dear Sir:

"Yesterday evening as I was leaving the house at which I stay, Harry Brunow was waiting for me out in front and said that he wanted to talk to me
411 about the application covering the Relief Valve which I had gotten him to execute a few weeks ago.
741 As I was going up town in my car I told him to get in and we would talk things over on the way.

"While riding up the main street of the town, Brunow wasted no time in coming to the point and asked me

how I would like to make some money, to which I answered that nothing would please me better. Brunow said he supposed that I knew he was working with Dubbs and that they were trying to get information concerning our early experimental work on cracking. I told him that I had a general idea of what Dubbs had been doing but did not go into detail at all. Brunow then said that he guessed I knew Wannack but I told him that I had not had the pleasure of meeting that gentleman. Finally Brunow said that Wannack represented Dubbs in this district and had a free hand and unlimited money to buy what Dubbs wanted. He said that Wannack had instructed him (Brunow) to see me and tell me that they wanted information which I had and that there would be big money in it, not less than $20,000 and probably more.

"I told Brunow that I would hardly be interested in any proposition which Wannack could make and that Wannack looked like a crook anyhow. Brunow mis-
742 understood this and said that in case I did not want to deal with Wannack that he could probably fix it up so that I could deal with someone else. Brunow went on to say that I would be greatly surprised how much information Dubbs already had, but that what he wanted now to finish up his case was a letter from someone in authority, say Mr. Manley, Mr. Holmes or Mr. Behimer, stating that the original runs on Experiment #8 were failures. Brunow said that he had been authorized to mention sums as high as $35,000 or $40,000 in case the $20,000 at first mentioned did not interest me. I told Brunow that his outfit were pikers as they were trying to win millions but with only talk of such trivial sums as $20,000 to $40,000. Brunow seemed much surprised that I thought $40,000 was not enough and I kidded him along in this fashion for some time.

"During this time we had been riding up and down the main street of town and Brunow was obviously ill at ease, finally telling me that I would probably be fired if anyone saw me riding with or talking to him but I told him I guessed not. He also said that he had heard that I was being allowed to drive my
743 412 car into the plant now and that I should realize that the Company was just being good to me until the suits were over and Dubbs did not want to know anything that I knew, after which they (The Texas

Co.) would probably fire me. I told Brunow that such a situation had not occurred to me but he assured me that that was what would happen.

"While our conversation probably lasted half an hour no more points of particular interest came up. I told Brunow rather mildly that I did not think the Dubbs' crowd could interest me at all but Brunow insisted that later on he would have either Dubbs or one of his attorneys see me with some definite proposition to which I could answer yes or no. The idea was that I was to be told just exactly what Dubbs wanted and the very highest cash price that he would pay for it and that I could decide definitely then whether I would deal with them.

"Although I told Brunow all the way through that I was not at all interested in dealing with his people I did not pretend to be angry at being approached or insist that he should not see me again, this being in order that if you so desire it will be possible to communicate with Brunow and give him any propaganda
744 material which might be of use to us. Personally I do not see any reason for doing this and would prefer not to come in contact with the Dubbs' crowd any more. However, I assume that you and Mr. L. R. Holmes will consider this and advise me as soon as possible if you think that I should follow any new course in this matter.

"Yours very truly,

"(Signed) W. M. Stratford."

Mr. Hall: I now move to strike both of the letters offered in evidence, Exhibits 210 and 211, on the ground that they are incompetent under the proofs, they merely set forth hearsay and are to no extent binding upon the plaintiff in this case and are otherwise irrelevant and immaterial; and in view of those facts I refuse to cross-examine the witness.

745 The Court: I am reserving my ruling.

748 413 OTTO WANNACK, Hinueber Street, 1180, Hanover Germany:

Direct Examination by Mr. Thiess.

I did engineering work for the German Government railroads.

I have been in Germany since the 22nd of December, 1931. Prior to that time, I was in the United States. I am a German citizen and was born in Germany. I left Germany to come to the United States about 1900,
749 and landed in New York. I stayed in New York a short time, then went to Fort Smith, Arkansas. I stayed there approximately two months, then went to St. Louis, Missouri. I stayed in St. Louis until the latter part of 1916, then went to California. While I was in California, I met Jesse A. Dubbs.

750 I met Mr. Jesse A. Dubbs through Lincoln Clark and Anton Gletzner who had an office on the same floor in the Tahoe Building. I was very much interested in his brilliant mind, and his ability in making many puzzles clear to me in the oil game.

While I was there, I met Lee Dubbs and C. P. Dubbs, the sons of Mr. Jesse A. Dubbs. I got fairly well acquainted with Mr. Carbon P. Dubbs.

751 Later on, I was approached by Mr. Carbon P. Dubbs, to undertake an investigation against The Texas Company to ascertain if The Texas Company had conducted work on the same line Mr. Dubbs did. That happened in the latter part of 1925, or the first part of 1926. Exactly I cannot state. At that time I was intimately acquainted with Carbon P. Dubbs.

Mr. Dubbs mentioned that I should go to Port Arthur, and at the time he did not say where Port Arthur was. And I said it was an awful long ways to Port Arthur, because the only Port Arthur to my knowledge was in Asia and I did not feel like going to Asia. After making that statement, Mr. Dubbs said
752 to me, he says, "You fool, that is not in Asia, it is in Texas." I said, "All right, if it is in Texas, I don't mind going to Texas."

414 Mr. Dubbs told me what he wanted me to do at Port Arthur. I was to secure run sheets or blue prints or anything pertaining to the matter which had

any bearing on the case. We talked quite a bit about
753 how I was to get this information. I can't positively give the exact conversation because the time is so long a time ago since that happened. The substance was that I should secure that evidence and the sky was the limit, or some—the same meaning to that effect.
754 I told Mr. Dubbs at the time that there was a risk to it which I would certainly have to have some assurance about it; that in case that I would come in contact with the law I would have a certain amount of protection. And Mr. Dubbs answered that question then, he said; "Yes, certainly we protect you." And I wanted to know who in the world was "we". Why he said "The Universal Oil Products Company". I said to Mr. Dubbs, "Well, would you see to it personally that the Universal Oil Products Company would protect me in the event that I would come in contact with the laws"? And he said he certainly would.
755 Some little time, a week or ten days after this conversation, I went down to Port Arthur.

At the time that I discussed this matter with Mr. Dubbs, I told Mr. Dubbs why as little as possible would I use my own name, I would use a fictitious name, and I used that name, one of my given names, Carl, and a common ordinary name, Smith. I used that name to a certain extent while I was down there. I could not swear to whether or not at the time I undertook this mission my name was enrolled as an employe on the books of the Universal Oil Products Company.
756 Mr. Dubbs told me that I would be known to about four men in the organization; that was himself, Mr. Dunham, the head bookkeeper, and Mrs. Egeler.

Mr. Dubbs asked me what I thought it could cost to carry this mission through. I said that that was im-
757 415 possible to give any estimate on because we had to meet conditions as they arrive and naturally money could not be any object in it. He said, "Would $5,000.00 do the trick?" I said "No." If I had to pin myself down to $5,000.00 I would never undertake it. The conversation was that I should receive the money through a bank, and I told Mr. Dubbs I did not want that because I did not want to have any evidence against me that I had any connection whatsoever with the Universal Oil Products Company. I wanted to have a lone hand. I want the money in cash. The

money was sent to me by Mrs. Egeler in cash and when I went down there, I took cash with me that I received
758 before I left. I took about a thousand dollars. I received a salary for this work and I paid it myself. I had a fixed salary and expense account and as I needed money for my own personal purposes, I naturally used it from funds which were in my possession. There was no limitation put on the amount of money I was entitled to draw from Mrs. Egeler; that was all settled in the beginning before I started on this trip, there was no strings tied to it.

759 When I first went down to Texas, I went to Houston, Texas. As everything had to have a beginning, I started in with the office of The Texas Company which was located in Houston, Texas. I familiarized myself with the conditions of the town, just snooped around about The Texas Company's building, watched some of the employes that went in and came out. That was in the beginning of it. Prior to that I had made an arrangement with a couple of helpers in Chicago. I brought them out and we took a visit one night time in the office of The Texas Company.

760 We did not find anything that had any bearing on the matter of the case.

I left Houston and went to Beaumont, Texas. In the beginning I did very little there. I took a trip occasionally over to Port Arthur. I had a list of names which was given to me by Mr. Dubbs in Chicago
416 before I left. This was a list of those men who were at the time and had been working for The Texas Company which might be useful for getting this information on this mission I had undertaken.

The first employe of The Texas Company that I got well acquainted with was a man by the name of Brunow. Through some inquiry I made about Mr. Brunow I found out that in his spare times when he was not working for The Texas Company he did some work for
761 a garage there. So naturally I went down to the garage and as opportunity presented itself I became acquainted with him.

I had to break the ice, naturally, I had to tell him what my mission was, what brought me down to Texas, and I tried by offering him some compensation if he would help me to secure some evidence that The Texas Company was doing work similar as Mr. Dubbs had

done, to the extent what it was worth. I promised Mr. Brunow and paid him $200.00 a month. I also promised him payment in connection with any evidence he might find. If he would deliver the goods why I would pay him what I thought the stuff was worth.
762 Mr. Brunow started on it, took a little time, he came back and he said that I should get acquainted with a man by the name of Beyt.

Mr. Beyt was an employe of The Texas Company who had some connection with Mr. Behimer, doing some work for him. I met Beyt and told him practically the same story as I told Mr. Brunow, made him some offer too, if he would help and assist me getting this evidence.

In the very beginning of it their help was not so very
763 hot. Of course, naturally, you know, I could not spend my life time in Texas, I wanted to close the matter up as quick as possible, and one day Mr. Beyt said to me, he says "How in the world do we know that you are representing the Universal Oil Products Company?" Well, I says, "You have to take my word for it." "Well, that is not enough."

763 417 That kind of stumped me in the beginning, and, I believe, I told him that I would furnish that information wanted. In fact I went to Chicago, met Mr. Dubbs, told him about it, and asked him to come along with me to Texas because it would help me a great deal and convince those who I had at this time engaged to getting the evidence wanted. Well, Mr. Dubbs did not like the idea of going to Texas, I don't know why—

Mr. Haight: We object to that.

The Court: Sustained.

Mr. Haight: We ask that it be stricken.

The Court: Strike it out.

765 Why Mr. Dubbs objected in the beginning of it coming to Texas. He says, "My God", some similar words as that, "What in the world did I send you out there for? If I have to go out there naturally there is no use of you going out there", some similar words to that effect.

763 Anyhow, he went along with me. When I got to
764 Texas with Mr. Dubbs, I notified Brunow and Beyt that Mr. Dubbs was in Texas and asked them to set a date when he could come together so they could meet

him. We got together in a hotel in Beaumont. This was in 1926.

765 Mr. Beyt and Mr. Brunow, myself, and Mr. Dubbs were there at that meeting. We discussed the matter in general, the possibilities, the danger connected with getting this stuff because it was under lock and key. And I mentioned at that meeting that the man who really could help us and save us time and money was
766 Mr. Behimer. Which one of the men it was who said there was not any chance getting Mr. Behimer, I do not recall now, I cannot remember that; it was Brunow or Beyt, one or the other, said that it was not possible. And I think Mr. Dubbs said well—I cannot answer that exactly what he said, but words similar to this effect, "If money can make it, we will get him."

766 418 There was discussion at this meeting with respect to an affidavit by Mr. Beyt. I was the cause of that and already had set up an affidavit prior to the time that Beyt and Brunow came to the hotel, with the assistance of Mr. Dubbs, so that when Mr. Beyt would come to this meeting he should sign it. But for some reason or other, which I do not remember, it was not
767 signed. At this meeting Mr. Dubbs told Mr. Brunow and Mr. Beyt that I was at Beaumont and Port Arthur on this mission for the Universal Oil Products Company to secure the evidence. I cannot remember anything else that was said at this meeting. If I had known I was ever coming up in this mess again, why I certainly would have some notes made at the time. It is eleven years ago. After the meeting the men went home; Mr. Dubbs stayed in the hotel in Beau-
768 mont. He was not registered there under his name. I registered him. He stayed there in rooms that I had registered.

769 After this meeting in Beaumont I got hold of a photographer, rented his whole paraphernalia for a period of time to photograph the evidence which we eventually would have from The Texas Company. I went to the post office, secured a post office box, and the number of that box was 303. I had some envelopes printed, and told Mr. Brunow and Beyt that Mr. Beyt should get the evidence to Brunow, Brunow take it over to the photographer, and the photographer would see to it that it got in the post office box No. 303, and

I in turn would send it on to Chicago. I can't say
770 this plan was successfully carried out. But we didn't give up the plan. After Beyt and Brunow told me that the evidence wanted was under lock and key, and very hard to get into it unknown to anybody else, I suggested to get me a set of keys and I would have
771 a duplicate made of them. Then a few days after that I was informed again that it couldn't be done.

And I said, "Well give me the numbers," of those
771 419 filing cases; that I would produce the keys. Well maybe a few days later I got those numbers and with those numbers I left for Chicago. Mr. Brunow and Mr. Beyt and I got some documents out of the files of the Texas Company. We got a blue print on a jet pump. I got that from Brunow. After I got that, I remember meeting a man by the name of Ward. Mr. Ward was not employed by The Texas Company; I think he was selling belts and accessories, what The Texas Company could use. Through my acquaintance
772 with Mr. Ward I met a man by the name of White. Mr. White was connected with Mr. Behimer in some of that experimental work which The Texas Company conducted at Port Arthur. I met Mr. White and I told him identically, practically the same story as I told Mr. Beyt and Brunow, what my mission was in Port Arthur. At the beginning Mr. White said he had to think about it. I said, "Sure, do it, but don't take too long; the less time you use in thinking, the more you can make, the larger the remuneration would
773 be." But I couldn't warm up to that man, I didn't trust him from the very beginning, and at the end of the transaction, why it proved so that my conception of the man's character and makeup was correct. He didn't help me; he stalled.

I don't recall exactly if I got those numbers of the cabinets from Mr. Brunow, from Mr. Beyt, or Mr.
774 White, but without a question it was one of those three men. When I got the numbers of the cabinets, I went East; stopped in Chicago and told Mr. Dubbs, informed him what I intended to do. Mr. Dubbs said that I didn't have a Chinaman's chance. I told Mr. Dubbs that he would have to wait until I got back to ascertain that. Then I went to Jamestown. I got the keys, two sets of keys. I came back to Chicago and showed them to Mr. Dubbs.

775 Very likely Mr. Dubbs said something, but what he said I don't recall at the present moment. Then I went back to Beaumont, to The Texas Company.

775 420 I gave the keys to these boys. Very likely in the end of it Mr. White got the keys. I did not give him both sets of keys. I kept the second set of keys for myself in the event he kept on stalling, that I would go in there myself and get it if it was to be got.

After Mr. White got the keys nothing happened.

776 Q. Well, did Mr. White use the keys to get any evidence from The Texas Company?

A. I wasn't present there; I couldn't tell you that if he did or not. I question very much if he ever had that key in the lock.

Q. Well did they ever get any evidence out of it? Was any evidence sent to Chicago that Mr. White got?

A. We sent a blue print to Chicago, photostatic copy. I don't know, I can't recall if that was from Mr. White or was from Mr. Beyt, but it was pertaining to the jet pump that Mr. Behimer used on his experimental work, and I got word from Chicago that that was not what they was looking for, and naturally I told the boys, I said, "Step on it."

I don't remember at the present time whether Mr. White got any drawings out of the files of The Texas Company after I gave him the keys. Some time after

777 that I went to Chicago and talked to Mr. Dubbs. Every time I went to Chicago I talked to Mr. Dubbs. This time I told him that I thought that maybe I would be able to get some evidence in the New York office. Mr. Dubbs said, "Go ahead." I went to New York. I got an address from the Chicago office to get acquainted with a man by the name of Olson. I met Mr. Olson and we talked the matter over. I did some investigation of the possibility of getting into the office, and as it was not possible, I gave it up. I received a message from Port Arthur, while I was in New York, from another investigator who worked for the Universal Oil Products Company, by the name of Kaufman.

778 This message was that I should come on, everything was clear, evidence could be got, or similar words

778 421 to that effect, and I took Olson along with me and we went back to Texas.

I met Mr. Kaufman in Houston. I listened to him and I told him, I says, "No more use fooling around

with Mr. White; Mr. White has been a double crosser from the very beginning of it; couldn't help us any, and as far as I am concerned there is only one man who would help matters along; that was Mr. Behimer." And that has always been my contention from the first time after I got out in Texas.

779 I still had that second set of keys with me. I wrapped them up in a little box, put a stamp on it and shipped it to Mary Egeler in Chicago, Michigan Avenue, 1002 or 4, or whatever it is. The office of the Universal Oil Products Company. After that I went to California. There I did some minor work for the Universal Oil Products Company; it didn't amount to anything. I was paid my compensation by the Universal Oil while there. I was in California almost a year. Then I was notified by Mr. Dubbs to resign.

780 While I was engaged in this work in Houston, Port Arthur, and in Texas, I spent in the neighborhood of ten thousand dollars. I received this money from Mrs. Egeler.

I remember that I paid Brunow a good many two hundred dollars, but how much Mr. Beyt got, that exactly I couldn't tell you; he got some money too. My agreement with Mr. Brunow as to the payment of money, was an oral agreement. I gave nothing in writing.

781 I remember a man by the name of Witherup who fitted in the picture. He had a mortgage due, and I think I advanced him a thousand dollars on it, but I got the money back after a while from Universal.

782 I recognize the letter (DX 213) dated Los Angeles, California, October 23, 1926, addressed "Dear Harry". I wrote it myself to Brunow.

783 422 Another letter (DX 214) addressed to "Dear Harry", undated, is in my handwriting. This letter which is DX 214, followed the letter DX 213.

784 DX 215 is a list I made in Chicago from the names Mr. Dubbs gave me. The letter, DX 204A, dated 5/11/26, addressed to "My dear friend," is in my handwriting.

785 I recognize the photostat of a typewritten letter, DX 204B, dated 4/22/26. I wrote that letter.

I recognize a photostatic copy of an envelope, DX 204C. I had those printed so that my name wouldn't appear on them. I gave the envelopes to Brunow and Beyt.

423 *Cross-Examination by Mr. Reichmann.*

786 On my recent trip from Germany on the Bremen,
I arrived in New York on April 21, 1938, and was met
787 by Mr. Thiess. I had previously met him in Germany,
in March, 1938, but had had no prior notice from him
that he was coming to see me.
788 I met him alone in his hotel in the town of Hanover.
We had a conference that lasted a couple of hours.
788-9 The next time I saw him was in Hamburg where
he helped me get a passport through the American
Consul. We were together about six or seven hours
at that time. He did not come back from Germany
with me and the next time I saw him was on the
quay in New York.
790 The first time I saw him in Germany, Thiess told
me that Universal Oil Products Company had filed
a suit against the Globe Refinery, and since it had
come to his knowledge that I had done some work for
Universal, he wanted to know if I would tell the truth
about it. I said I might if he would make in that many
for my time. He did not say he would in that many
words but in substance he gave me that meaning.
791 I told him I wanted ten dollars a day and expenses.
He thought this was mighty high but I told him to get
somebody else then who could do it cheaper.
792 There was also an agreement that after I got
through testifying, Thiess would help me get the
European rights for the Lincoln Clark vapor phase
process, if he could, but there was no further mone-
tary consideration.
793 It also was understood that through some connec-
794 tion which Thiess had I was to be given informa-
794 424 tion about the Dowell process which, by means of
chemicals would free the oil in the ground so that
it could be pumped.
795 Thiess accompanied me from New York to Chicago
where I met Von Holst, Neuman and a man named
Olsen. We did not discuss my testimony at that
time. I left in the afternoon for Rock Island, Illinois.
796-7 My conferences in Germany with Thiess pertained
to the work I had done for the Universal Oil Products
Company. Thiess did not then show me any affidavits
797 or discuss what had been said in any affidavits. I
signed a paper relative to my coming to the United

States. Thiess also had my photograph taken. We did not finish our discussion in Hanover and it was continued in Hamburg. This took up some of the seven hours we were together there, and I believe we took a couple of hours to discuss the general European situation and the Nazis.

798 I was in Thiess' office for a few hours on April 23, and then went back to Rock Island, Illinois, because the case was postponed. Between that date and the 799 present time I have been in Rock Island all of the time except for about two and a half days visiting with Lincoln Clark in California.

801 I arrived back in Rock Island on May 22, and have been there until last night, May 31, 1938. On April 802 23, Thiess gave me a photostatic copy of White's testimony, nothing else. I think I still have, at the hotel, the affidavit that White made, but, nothing else.

I have told about conversations I had with Dubbs. None of his instructions to me were in writing.

802 425 I did not have any correspondence with Dubbs personally during all the time that I was working for him in Texas.

803 In Texas I did not register in the hotels as Cal. I think I registered in my right name. I did have 426 correspondence with Mrs. Egeler who sent me money. I have not preserved any correspondence between myself and C. P. Dubbs either in his name or under the name of Egeler.

804 The letters which Thiess showed me and which I identified here this afternoon had not been shown to me before I took the witness stand. As I explained before, all that I ever received from Thiess was the White affidavit which I had asked for just out of curiosity, to find out what he thought about me. I 805 got a good laugh out of it. He put it on pretty thick. After a while I learned for certain that he was a spy and that he was working against us. He did not lead me on very much. He pretended that he was my friend and was going to help me, but he was not clever enough.

806 After I got back to Texas, the positive proof that he was a spy and had double-crossed me was a communication I had with Kaufman. The proof that I got through Kaufman was when my work was about over. I learned that he had been reporting back to

the Texas Company all his talks with me and Brunow and the rest. What Kaufman had was practically identical with the stuff which we had some time prior to that and I told him that if he did not have anything else there was no use going any further with this.

807 Later on I learned that White, by arrangement with the Texas Company officials, had given to me some
808 run sheets that did not mean anything. I learned that towards the very last last, when I was down there. This pretty well confirmed my first opinion of White.

It probably was some time in August or Sep-
808 427 tember of 1926, shortly before I went to California, that Dubbs took me off of that work down in Texas. He asked me to come back to Chicago and
809 then from there I went to California. I was asked to make an investigation of the Von Groelling process. That work lasted more than a few weeks. Then I loafed around out there. I spent almost a year in California during which time I was being paid by Universal. I did not look for work out there. I did
810 not have to. I cannot recall that Dubbs ever said anything about my trying to find some other work out there.

About a year from the fall of 1926, he asked for my resignation and I resigned. I stayed out there very likely another year, a part of the time helping Lincoln Clark build a little experimental plant for his process.

811 In the fall of 1928, after I left California, I went back to Chicago. I started developing a gas making machine for outlying homes where there was no gas supply. Then through the kindness of Mr. Dubbs I became connected with the Hump Hairpin Manufacturing Company. Sol Goldberg was at the head of
814 this company and Dubbs helped me get his financial backing in the development of the gas-making apparatus. I was associated with Goldberg for about a year and then had a nervous breakdown. I was under treatment at a sanitarium in Illinois for nine
815 or ten months, and then went to a sanitarium at Wauwatosa, Wisconsin. I was there five or six months and then on the 15th or 16th of December, 1931, I left for Germany and did not return until the present time.

815 428 I have made no arrangements to remain in this country and hope that I can take the Clark process back to Germany, but it looks as if I will go back 816 in much worse condition than I came here. It seems doubtful that I can convince the Europeans of my right to use the Clark process and if I had known that, I would not have come over.

Q. You would not have come over at all?

A. I should say not, because I want to go on record here that I have absolutely no animosity against the Universal Oil Products Company, Mr. C. P. Dubbs, or am I interested in it, for either side, the Globe or the Universal Oil Products Company, get their rights in this court room.

Q. Why do you say that? Has anybody suggested that you had animosity?

A. No, I just simply want you to understand what my attitude is.

Q. Did I tell you that you had any animosity?

A. You never gave me any inkling of it.

Q. Did I ever speak to you before you took—

A. The first time I ever say you was right here in this court room.

Q. Have you seen anybody else connected with the Universal Oil Products Company since you got back to America on this occasion?

A. Today, in this court room.

Q. That is all, isn't it?

817 429 A. Yes.

Q. They never communicated with you and you did not communicate with them?

A. No, because they never had any chance to do that, see?

Q. Because what?

A. Because I never went near anybody.

Nobody suggested that I remain out of town. The reason I wanted to go to Rock Island was because my daughter was there.

818 I came over first class on the Bremen. Approximately 1,350 marks were advanced to me before I left Germany. I have submitted expense accounts for my expenditures in Germany and on board ship and another for expenditures while in America.

820 Q. Did that cover your expenses to California, your trip out there. They paid for that, didn't they?

A. That is money naturally I will have to pay from the ten dollars a day which—

Q. Well, you are expecting them to pay for that trip to California, aren't you?

A. That is rather far-fetched, that expectation.

Q. Well, but isn't your trip out there a part of the bargain, to see about the Lincoln-Clark that they were going to help you to get?

A. Well, I am very grateful for the idea. I certainly will put it on the bill.

821 C. P. Dubbs has always been a good friend and has helped me at different times. He helped me get a connection with Sol Goldberg to exploit and
821 430 finance my process. I think Dubbs is all wool and and a yard wide.

I had known Dubbs in California before he asked me to make this investigation in Texas. Up to the year 1931 I think I knew him for approximately 22 years.

822 When he asked me to make that investigation I was living in California. My salary started at $200. and then was raised to a maximum of $300. a month for that job.

Q. Now, C. P. (Dubbs) told you, did he not, or you
823 knew at that time that he was the inventor of this
431 clean circulation process? You knew that, didn't you?

A. Yes, sir.

Q. And he told you when he talked to you about undertaking this investigation, didn't he, that he was fearful that the Texas Company was trying to put something over on him?

A. Yes, sir.

Q. And to rob him of his invention?

A. Yes, sir. That was the object of my taking the trip out there.

Q. That is the point exactly, to find out what the God Almighty's truth was about that thing?

A. Yes, sir.

Q. And just what the Texas Company had been doing through Behimer?

A. Yes, sir.

Q. That is all he wanted to know, wasn't it, what the truth was?

A. The truth.

Q. And that is all you endeavored to get, was the truth, was it not?

A. Nothing else.

824 In trying to get their files for the purpose of having photosatic copies made, I wanted to get the facts and the truth as to what their records showed. After I had copies made, the originals were to be put back in the files of the Texas Company and copies were to be sent on to Dubbs.

824 432 PX-2 is a letter I wrote to Dubbs from Germany.

3.2.1938

828 Wannack-Hannover
Hinueberstr, 11a, Germany
Mr. C. P. Dubbs,
1004 Michigan Ave..
Wilmette, Ill., U. S. A.

Dear C. P.

The following mite interest you ore the U. O. P. Corporation. Winkler and Koch, Wichita, Kansas had their patent attorney H. Fecht, Berlin-Charlottenburg 4, Giesebrechtst. 16 write to me, wich he did requesting me to inform him if I would talk to him, he enclosed the money in stamps to wire to him which I did.

I met him Saturday the 19th. at 8pm at the Ernst August Hotel lobby. I notice a couple sitting at the adjoining table, so after interducing himself I told him in english if he wanted to talk to me he would have to do it on the street after some hesitation he consentet and after leaving the hotel I told him to go ahead and get it of his chest.

He wanted to know if I be interested to work for Winkler and Koch in Europe if I would like to take a trip to the states and talk to W and K in reference to some work I should had done in Port Arthur I interrupted him then and told him how sorry I was that he had come to hannover, because I did not have any information for love or money to give him or his client.

433 Dear C. P. I am still fishing, could you get me all is known how "Dowells special treatment to overcome the natural barriers on oil wells, through a treatment with acid and chemical's. They habe treated

some 10 000 wells in the last five years to produce a gain of over 50 000 000 in the oil industry. We could use hier in Germany such process, I be very grateful to you to know the in and out's about it, if it is not a patented proposition I believe I could arrange for getting the facts wanted by myself on the ground.

Hoping your and your's health is at the best, with best regards.

sincerely yours

Otto

[R, 828-9]

825 PX-3 is the reply to my letter. I received it from Lee Gary, who has been associated with Dubbs and whom I have known for many years.

826 PX-4 is a letter, dated March 29, 1938, which I later received from C. P. Dubbs. It contains the following statement:

831 "On my arrival back to the States yesterday, I received your letter of March 2nd. For your information I will state that Universal is suing the Globe Refining Company for infringing patents owned by the Universal, among which are my own. The Globe Refining Company's attorneys, through a subpoena, ob-
434 tained all the records of the Texas Company, which includes quite voluminous reports of your activities when you were attempting to obtain the facts relative to their work by Behimer, and these documents have been put in evidence. I am sure Universal, or anyone else, would have no occasion whatever to fear your testifying in any duly authorized court as to your activities, but I really believe that in justice to yourself, you should not discuss the matter with anyone until you have refreshed your memory and read over the testimony in the Globe case referring to your activities as I do not believe you have done all the things
832 they have accused you of doing. I think it would be only fair and proper if you would keep the Universal fully informed as to any contacts others might make with you, and the object of same.

If, at any time, you deem it urgent to communicate with the Universal, do not hesitate to cable. Their cable address is Dubbspro, New York. Or it might be better if you would communicate with Mr. Lee J. Gary, 1014 First National Bank Building, Chicago,

Illinois. The cable address is Franbel. Of course you will be reimbursed for any such expense."

[R, 831-2]

435 I did not receive a letter from J. Delattre Seguy before leaving Germany. The carbon copy of that letter which you now show me gives the information concerning the Dowell process which I had asked Dubbs for.

834-5 After I returned to the United States this time I purposely did not communicate with Dubbs, Gary or Universal.

835 In my letter of March 2, 1938 (PX-2), I said that Winkler-Kock, Wichita, Kansas, had their patent attorney from Berlin write to me requesting a date for conference. When I met him he told me that Winkler-Koch had built a plant at Hamburg and that they were
836 sued by Universal for infringement. I was not interested and sent him back to Berlin.

I stated in my letter to Dubbs (PX-2) that this Berlin attorney wanted to know if I would be interested in working for Winkler-Koch in Europe. I had never heard of the firm before this man mentioned it and I was not interested. He also wanted to know
837 if I would like to take a trip to the states with reference to some work that I should have done at Port Arthur; but I told him I was not interested.

I did not talk with him any longer than ten minutes and did not inquire what work they wanted me to do for Winkler-Koch. This man did tell me that Winkler-Koch were defending a suit here that was brought against them and the Globe Refining Company and that Winkler-Koch were interested in defending that suit and wanted my help in the states, and therefore, wanted me to come over to this country. I did not come at that time.

838 436 When Thiess was in Germany, he did not tell me
839 that the Winkler-Koch people were hooked up with the Globe Refining Company, who were using the Winkler-Koch process and were sued for infringement. The Winkler-Koch name was never mentioned. He said that the Globe Refining Company was fighting the suit and that there was a group of smaller concerns which had contributed to the pot. He did not say

840 what other companies put money into the pot to defend and I did not ask him because I was not interested.
842 I do not recall writing Dubbs from California and asking for a position. It is possible.

Before I left California for Chicago to start the investigation work, I had been connected with the oil business for some years and had had some experience in oil refining.
843 Before I came to America the last time I worked for a German railroad as a trouble shooter. If there were any delays in the schedule, I investigated the cause and made suggestions for improvement of the schedule.
844 These delays pertain to the rail arrangement or to loading and unloading or things of that kind. I had been working on that job for about 15 months before coming to America the last time. I had been out of work for about five years before going to work for the railroad company. During this period I was on relief practically all the time.
845 The railroad service paid 30 marks a week. I lived by myself in a furnished room in Hanover.
845 437 I spoke about having spent about $10,000 for the investigation work in Texas. I went to work down there in the summer of 1925 and was taken off that work in the fall of 1926 at the time when I went
846 to California. During the time I was engaged in the work in Texas, my wife was living with me. The $10,000 included the hotel bills and traveling expenses
847 for my wife as well as myself but the expense for the upkeep of my wife came out of my own pocket. It included also $200 a month which I paid Brunow.

847 438 *Redirect Examination by Mr. Thiess.*

Q. Mr. Wannack, while you were on this investigation in Texas, did you or did you not have any substantial amounts of money on your person at all times?

Mr. Reichmann: Now that is leading and suggestive, your Honor, and I object to it. It is indefinite, and calls for a conclusion.

The Court: It is indefinite. You may ask him how much he had.

Mr. Thiess: Q. Can you state how much money

848 you had on your person most of the time while you were on this investigation down in Texas?

The amount of money I had varied from time to time. It could have been $500.00 or more. At times I had more than $500.00, possibly more than a thousand dollars on my person.

Referring to the first knowledge that I had that
849 Mr. Thiess was coming to Germany to see me, I received a cable from Lincoln Clark that Mr. Thiess intended coming over. But the first knowledge that I had that Mr. Thiess was there was, as I have testified before, that I received his note.

439 *Recross Examination by Mr. Reichmann.*

850 When you asked me if Thiess had communicated with me in any manner, either by cable or letter, or directly or indirectly, that he was coming to Germany, to see me, and I said "no", I did not understand that you meant to inquire whether I had had any word from anybody that Thiess was coming over to see me.

851 I may have asked Thiess why he had Lincoln Clark cable me that he was coming. I did not think it was strange that Lincoln Clark should be cabling me. I had known him before that time quite well.

According to my best recollection, the cable said

"Thiess, attorney, intends calling on you Stop Speak freely as it would help us all."

852 or words similar to that. The cable was sent from Pasadena.

You call attention to my answers yesterday, where I said I did not know that Thiess was coming to see me and that the first knowledge I had that he was coming was when I found a notice at home that he wanted to talk to me.

"Q. Now I again ask you, didn't you recall when you made the answer there that you had had this cable from Lincoln Clark saying that Thiess was coming over, or how do you explain the answer that you made?

"A. I already made that answer.

"Q. That is the best answer you can make, is it?

"A. Yes, sir.

"Q. All right. Now, you spoke about having
853 440 some money on your person, as high as $500.00, possibly more than a thousand dollars. How much more than a thousand dollars did you ever have on your person?

A. Oh, I could not tell you that.

Q. You could not tell?

A. No.

Q. Did you ever have as much as a thousand dollars on your person?

A. Very likely.

Q. Well, don't you know, or are you guessing?

A. No, I am not guessing, but it is 11 years ago, you know.

Q. Well, a thousand dollars is a pretty good sum of money, isn't it, or was it—yes, I will leave it that way. Wouldn't you remember if you ever had as much as a thousand dollars on your person down there?

A. Yes, I would.

Q. Yes. Well, you cannot say that you ever had as much as a thousand dollars on your person, can you?

A. Why not?

Q. Well, did you?

A. I had, yes.

845 441 It is possible that part of it was money that belonged to me in the form of salary. From time to time, I received advancements of money to cover my salary and expenses for the future. I would spend that and then ask for more.

442 DEFENDANT'S DOCUMENTARY EVIDENCE.

856 Mr. Von Holst: Before calling the next witness we wish to introduce some documents in evidence that the plaintiff has produced in response to the subpoena duces tecum; they have not produced all that were called for, but those that they have produced we should like to introduce now.

The correspondence which relates to the hiring of Mr. Behimer:

I offer in evidence letter signed F. C. Fantz, dated November 30, 1926 as DX-221.

DX-221 reads:

(Letterhead of Midwest Piping and Supply Co., St. Louis, Missouri.)

"November 30, 1926.

Mr. S. Olsen,
c/o Muelbach Hotel,
Kansas City, Missouri.

Dear Mr. Olsen:

Enclosed you will find a letter of introduction to
857 Mr. Behimer at Port Arthur, as per request of our friend, Dubbs.

Yours very truly,

F. C. Fantz"

Mr. Von Holst: Letter of November 30, 1926, from F. C. Fantz to Mr. Otto Behimer, Port Arthur, Texas, as DX-222.

DX-222 reads:

(Letterhead of Midwest Piping and Supply Co., St. Louis, Missouri.)

"November 30, 1926.

"Mr. Otto Behimer,
Port Arthur, Texas.

Friend Otto:

This will introduce to you, Mr. S. Olsen. You can depend on anything Mr. Olsen tells you to be authentic and will be held in strict confidence.

857 443 "I was in your territory last week on business and went down to Port Arthur, but did not get to see you. I would have liked to have had a chat with you over old times.

Any courtesy that you show Mr. Olsen will be appreciated by the writer. Trusting to see you soon,

Your friend,

F. C. Fantz."

858 Mr. Von Holst: Telegram Olsen to M. Egeler from Lake Charles, Louisiana, dated December 7, 1926, as DX 223.

DX 223 reads:

(On telegraph blank of Postal Telegraph.)
"R73NO HF 1135 PM 56 NL
Lake Charles La Dec 7 1926 1746

M Egeler

2120 310 So Mich Ave Room 210 Chgo Ills
I find that Behimer is in New York and will be there awhile yet Stop In the meantime I have arranged to meet Stratford in New Orleans for a preliminary talk Stop Will leave here tomorrow noon and if you have any special orders send them to the St Charles Hotel New Orleans for the next two or three days.
Olson"

Mr. Von Holst: The next is a telegram from C. P. Dubbs to Robert J. Dunham, marked "Confidential", 310 South Michigan Avenue, Chicago, Illinois, as DX 224.

859 The telegram is dated July 17, 1927.

860 DX 224 reads:

(On telegraph blank of Western Union.)
"SAA 184 70 NL 1 Extra. Brownsville Tex 17

Robt J Dunham.

Confidential 310 South Michigan Ave Chicago Ills.
Mr. Thompson President First National Bank
860 444 Harlingen Texas is very close friend of party we want and is helping us Stop The Continental Bank is their corresponding Bank and it would help greatly but not absolutely necessary if you could have Continental Bank wire Thompson Mr. Kerr is worthy of any assistance Thompson can render him but do not mention my name Stop Wire me what you do.
C P Dubbs"
"Copy to NY
7/18/27"

861 Mr. Von Holst: Telegram from C. P. Dubbs to Robert J. Dunham, marked "confidential", 310 South Michigan Avenue, Chicago, Illinois, dated July 17, 1927, the wire being sent from Brownsville, Texas, as DX 225.

DX 225 reads:

(On telegraph blank of Western Union.)
"PSA124 57 1 Extra NL

Brownsville Tex 17

Robt J Dunham

Confidential 310 South Michigan Ave Chicago Ill
Attorney was unsuccessful with Texas party hence have taken matter in my hands and having them help Stop May be here at Eljardin Hotel for week or two therefore will you please ask Dr Mayus if can skip treatments until I return or if not can he mail me outfit so I can give myself treatments.

C P Dubbs."
"Copy to NY
7/18/27"

862 Mr. Von Holst: Telegram dated July 18, 1927, at Chicago, Illinois, from R. J. Dunham to C. P. Dubbs at Eljardin Hotel, Brownsville, Texas, as DX 226, reading:

862 445 "From Universal Oil Products Co."
"Copy of Telegram"

"Chicago, Ill. July 18, 1927

C P Dubbs
Eljardin Hotel
Brownsville Texas

Your two night letters seventeenth Continental wired Thompson following quote we understand Mister Robert M. Kerr of Pittsburgh Pennsylvania is carrying on certain negotiations with you we know of Mister Kerr's connections and believe you can safely rely on the fulfillment of such reasonable commitments as he might see fit to make for them unquote Doctor Mayers suggests deferring your treatments until your return.

R J Dunham

RJD:LF
charge UOP Co.
day letter 63 words"

863 Mr. Von Holst: Photostat of a wire from Continental Commercial National Bank of Chicago by R. G. Danielson, Cashier, to L. H. Thompson, Esquire, First National Bank, Harlingen, Texas, dated July 18, 1927 as DX 227 contents as quoted in DX 226.

Mr. Von Holst: Telegram dated July 20, 1927, from C. P. Dubbs to Robert J. Dunham, confidential, 310 South Michigan Avenue, Chicago, Illinois, as DX 228.

864 DX 228 reads:

(On telegraph blank of Western Union.)

Jul 20 AM 11 49

"SAA 184 158 Blue 1 Extra. Brownsville Tex 20 1008A

Robt J Dunham, Confidential.
310 South Michigan Ave Chicago Ill.

Please telephone my house I will be Harlingen Texas Hotel Reese Wilmont until I wire otherwise Stop Account poor phone connections and all doors
446 and windows wide open and every one in hotel
864 hears I give up trying to phone you but it may be very necessary to pay the twenty five thousand bonus in spot cash and any delay would be very serious hence when time comes I or Kerr will wire you to have Continental Chicago telegraph same to First Natl Bk Harlingen to account of Kerr as I do not want my name to appear if can avoid same Stop When time comes it will be necessary to act without delay hence will above arrangement be satisfactory or what do you suggest to handle money it may be a day week or much longer before matter comes to head and may have to raise price Stop We will have to succeed now or never.

C P Dubbs."

Mr. Von Holst: Wire from Reichmann to C. P. Dubbs. The wire is dated at New York, July 21, 1927, and is directed to Mr. C. P. Dubbs, Hotel Reesewil-
865 mond, Harlingen, Texas, as DX 229.

DX 229 reads:

(On telegraph blank of Western Union.)

"97BS R 29 XU
YK New York NY 236P July 21 1927

C P Dubbs
Hotel Reesewilmond Harlingen Tex

Important you phone me Biltmore Hotel here Room Twenty One Thirty One tomorrow Friday morning Eight O'Clock New York time regarding matter you are on wire me confirmation this appointment.

Reichmann
234P"

865 447 Mr. Von Holst: Wire from A. F. Reichmann to C. P. Dubbs dated at New York July 22, 1927, as DX 230.

DX 230 reads:

"C. P. Dubbs

Report delivery care Hotel Reesewilmond Harlingen Texas.

Suggestions outlined your telegrams wholly unac-
866 ceptable and cannot be considered Stop Understanding was that intended negotiations were based on information that party desired to make change in his employment Stop On that basis company's understanding was negotiations with him would be conducted openly and in regular manner Stop Combined judgment and desire is you drop matter and return at earliest convenience for conference.

A. F. Reichmann"

Mr. Von Holst: A contract which plaintiff has produced, between the Universal Oil Products Company and Otto Behimer as DX 231.

867 DX 231 reads:

"For mutual consideration, Otto Behimer party of the first part and Universal Oil Products Company, a

Corporation having its main office at Chicago, Cook County, Illinois, party of the second part; hereby enter into the following agreement on this the twentieth day of August, 1927.

(1) Party of the first part hereby enters the employ of the party of the second part, and shall start active work for the party of the second part not later than October first, 1927, or as much earlier as possible and agrees to continue in the employ of the party of the second part for a continuous period of ten years, except party of first part reserves the right to cancel this contract at any time after the end of the first three years.

867 448 (2) During the period covered by this agreement, party of the first part agrees to devote his entire time, best efforts and skill to the interest of party of the second part as the latter's officers may direct or request from time to time.

(3) All inventions made in whole or in part by
868 the party of the first part during the period covered by this agreement shall be and is the property of the party of the second part, and party of the second part shall bear all the expenses connected therewith. Party of the first part agrees to execute all necessary papers to obtain patents thereon and transfer such inventions to ownership of second party and such additional papers and statement necessary.

(4) Party of the first part agrees to make his headquarters at second party's research laboratories located in Cook County, near Chicago, Illinois, or such other place second party may elect. Party of second part is to bear all expenses to move first party and household effects from Port Arthur, Texas, to the point Second Party selects for first party's headquarters.

(5) In consideration of above, party of the second part agrees to pay party of the first part, during the life of this agreement, an annual salary of Fifteen Thousand Dollars ($15,000.00), payable in equal monthly installments of Twelve Hundred Fifty Dollars ($1250.00), at the end of each calendar month.

(6) In addition to the above agreed salary, party
869 of the second part shall pay to party of the first part, an annual bonus at the end of each year, such annual bonus during the first five years of this agreement

shall not be less than Five Thousand Dollars ($5,000.00), and during the next or last five years shall not be less than Ten Thousand Dollars ($10,000.00).

869 449 (7) Any time after party of the first part has been actively working for second party sixty days under terms of this agreement, party of the second part, upon written request from first party, will advance to first party Twenty Five Thousand Dollars ($25,000.00), as a loan against the first five years minimum bonus provided for in this agreement.

(8) It is understood between the parties hereto that party of first part retains the right to execute all proper papers and testify relative to his former patents and patent applications now owned by his former employers or their assigns. It is further agreed that upon request of second party, first party will execute all proper papers and testify relative to his former inventions.

Executed in duplicate.

Otto Behimer,
Universal Oil Products Company.
C. P. Dubbs,
Vice President.

Kathryn E. Behimer,
Witness.

870 Robert M. Kerr,
Witness."

Mr. Von Holst: DX 231 bears upon its face in longhand:

"Chicago, Ill. Jan. 3, 1933.

Receipt of payment in full in settlement for cancellation of this contract acknowledged and contract hereby cancelled.

Otto Behimer."

And the same legend appears upon the second page.

Mr. Von Holst: An agreement entered into on the 16th day of November, 1927, between Otto Behimer and Universal Oil Products Company, as DX 232.

871 450 DX 232 reads:

"This Agreement, entered into this 16th day of November, A. D. 1927, at the City of Chicago, County of Cook and State of Illinois, by and between Otto

Behimer, party of the first part, and Universal Oil Products Company, a South Dakota Corporation duly authorized to do business and having its principal office in the City of Chicago, County of Cook and State of Illinois, party of the second part,.

Witnesseth:

Whereas the parties hereto entered into a written agreement dated August 20, 1927, providing for the employment of the party of the first part by the party of the second part; and

Whereas pursuant to the terms of said agreement of August 20, 1927, the party of the first part is desirous of borrowing from the party of the second part, and the party of the second part is ready and willing to loan to the party of the first part, the sum of Twenty-five Thousand Dollars ($25,000.) as hereinafter provided;

Now Therefore, in consideration of the premises and of the mutual undertakings of each of the parties hereto, it is covenanted and agreed by and between parties hereto, as follows:

1. The party of the second part does, at the time
872 of the delivery hereof, loan and advance to the party of the first part, the sum of Twenty-five Thousand Dollars ($25,000.) pursuant to paragraph Seven (7) of the agreement of August 20, 1927, between the parties hereto, and the party of the first part does now borrow from the party of the second part the said sum of Twenty-five Thousand Dollars ($25,000.), the receipt of which the said party of the first part hereby acknowledges.

872 451 II. The party of the first part hereby covenants and agrees to repay to the said party of the second part, its successors and assigns, the said sum of Twenty-five Thousand Dollars ($25,000.) without any deductions whatsoever, with interest, and at the times and in the manner hereinafter set forth. To evidence the said loan of Twenty-five Thousand Dollars ($25,000.) to him, the party of the first part has this day executed and delivered to the party of the second part, the series of notes, all dated the 16th day of November, 1927, and all payable to the order of the said Universal Oil Products Company, with interest

after maturity at the rate of six per centum (6%) per annum, as follows:

1. Note "A" for Two Thousand Eighty-three Dollars Thirty-three Cents ($2083.33) payable on or before December 31, 1927;

873 2. Note "B" for Five Thousand Dollars ($5000.) payable on or before December 31, 1928;

3. Note "C" for Five Thousand Dollars ($5000.) payable on or before December 31, 1929;

4. Note "D" for Five Thousand Dollars ($5000.) payable on or before December 31, 1930;

5. Note "E" for Five Thousand Dollars ($5000.) payable on or before December 31, 1931;

6. Note "F" for Two Thousand Nine Hundred Sixteen Dollars Sixty-seven Cents ($2916.67) payable on or before August 1, 1932.

All of said notes are, except for the amount and due dates, in the following form:

$..... Chicago, Illinois, November ...., 1927.

On or before ..... after date, for value received, I promise to pay to The Universal Oil Products Company, a South Dakota corporation,

873 452 ..... Dollars at the office of said Universal Oil Products Company, Chicago, Illinois, with interest at 6% per annum after maturity, until paid.

To secure the payment hereof, any attorney at law is hereby irrevocably authorized to enter the appearance of the undersigned in any court of record at any time after the execution thereof, waive service of

874 process, accept a declaration and confess judgment in favor of the legal holder hereof for such amount as may appear to be unpaid hereon, and a reasonable amount for the plaintiff's attorney's fees, to be included in the judgment, with costs of suit, and to file a cognovit therefor, and to release all errors which may intervene in such proceedings and to consent that no writ of error or appeal shall be prosecuted on such judgment, nor any bill in equity filed to restrain or interfere in any manner with the operation of the said judgment or any execution issued thereon, and to consent to immediate execution on such judgment, and that any execution issued thereon may be immediately levied upon any personal property of the undersigned, and to waive all right of the undersigned to have per-

sonal property last taken and sold under such execution.

.....

Note .....

III. Each and all of said notes in Article II hereof referred to shall be payable at the office of said Universal Oil Products Company, Chicago, Illinois, and shall bear interest at the rate of six per cent (6%) per annum after their respective maturities.

875 453 "Each and all of said notes shall be promptly paid by the party of the first part, and he covenants and agrees that he will pay the same without grace, on their respective dates of maturity, as an absolute and fixed indebtedness from him to the party of the second part, provided, however, that the payments of said notes shall be made out of the bonus or bonuses due to and earned by him under Paragraph Six (6) of the agreement of August 20, 1927, the intent hereof being that the bonus and bonuses earned and to be earned by the party of the first part shall be applied towards the payment of each and all of the said notes until they are fully paid. If, however, the party of the first part shall voluntarily for any reason leave the employ of the party of the second part, its successors or assigns, or terminate the said agreement of August 20, 1927, he shall pay all of the remaining notes that are not fully paid, even though he receives no bonus or bonuses from the party of the second part.

In order to assure the prompt payment of each and all of the said notes, the party of the first part hereby irrevocably authorizes and directs the party of the second part to apply the annual bonus due to and earned by, and to become due and earned by the said
876 party of the first part while in the employ of the said party of the second part under the said employment agreement of August 20, 1927, or under any other contract of employment that may hereafter be entered into by the parties hereto, (said bonus to be not less than Five Thousand Dollars ($5000.) annually for the first five (5) years of the employment of the party of the first part under said agreement of August 20, 1927), in payment of said notes as they respectively mature. The intent hereof is that said party of the second part is hereby irrevocably authorized and di-

rected to apply all of said bonuses at the end of each year, on the note of the party of the first part
876 454 falling due December 31 of the year during which the bonus is earned, and the bonus for that part of the year 1932 from January 1, 1932 to and including August 31, 1932, on the note of the party of the first part falling due August 1, 1932. If the bonus so earned by the party of the first part during any one year is greater than the amount of the note falling due December 31 of that year, then and in that event, the excess bonus shall be applied on the next succeeding note of the party of the first part.

No part of the bonus due to and earned by the party
877 of the first part shall be paid to him until each and all of the above and foregoing notes have been fully paid by him.

The said loan of Twenty-five Thousand Dollars ($25,000.) and the notes of the party of the first part evidencing the same shall be paid out of the bonus or bonuses earned and to be earned by the party of the first part while in the employ of the party of the second part, and the said party of the second part agrees with the said party of the first part that there will be sufficient bonus earned by the said party of the first part during the first five (5) years of his employment to pay the said loan of Twenty-five Thousand Dollars ($25,000.).

If the party of the first part shall voluntarily, for any reason whatsoever, terminate his employment with or leave the employ of the party of the second part, then, and only in that event, each and all of the notes of the party of the first part shall become immediately due and payable, without notice of any kind, and shall bear interest at the rate of six percentum (6%) per annum after said maturity and so becoming due and payable, and the said party of the first part expressly
878 covenants and agrees, for himself and his heirs, executors, administrators and assigns, to promptly pay each and all of the said notes in accordance with the terms and provisions hereof and thereof and the said
878 455 interest thereon.

To further secure to the said party of the second part the prompt payment of the said notes and the said interest, and the said party of the first part hereby assigns and sets over unto the party of the

second part, its successors and assigns, all of the bonus and bonuses that now are or may or will be earned by or become due to the said party of the first part while in the employ of the said party of the second part under said agreement of August 20, 1927, or under any other employment contract that may hereafter be entered into between the parties hereto, with full authority in the said party of the second part, its successors and assigns, to use and apply the said bonuses so due and to become due to the party of the first part, towards the payment of the said notes and said interest hereinabove referred to, until all of the said notes, together with the interest thereon, are fully paid.

In Witness Whereof the party of the first part has
879 hereunto set his hand and seal, and the party of the second part has caused its corporate name to be hereunto set and its corporate seal to be affixed hereto by its officers duly authorized in that behalf, all on the day and year aforesaid.

Otto Behimer (Seal)
Universal Oil Products Company,
By R. J. Dunham,
Its Vice Pres't.

Attest:
J. G. Alther,
Secretary."

Mr. Von Holst: Letter of November 16, 1927, from Universal Oil Products Company by R. J. Dunham, vice president, to Mr. Otto Behimer, Chicago, Illinois, as DX 233.

879 456 DX 233 reads:

(On letterhead of Universal Oil Products Company.)

"310 South Michigan Ave.,
Chicago, November 16, 1927.

Mr. Otto Behimer,
Chicago, Illinois.

Dear Mr. Behimer:

880 Referring to your contract of employment with us dated August 20, 1927 and agreement dated November 16, 1927, relative to our loan of $25,000.00 to you and

the notes executed and delivered to us by you to evidence this loan, we wish to confirm our mutual understanding of this agreement as follows:

First—This loan is to be repaid entirely out of bonuses earned and received by you while in our employ, unless you voluntarily leave our employ, as provided in our contract.

Second—In the event of your death, or disability arising from sickness or injury received while in our employ, all of the notes remaining unpaid shall be cancelled and the loan extinguished.

The notes you delivered to us are, of course, non-negotiable and we assure you that we will not negotiate these notes, but they will be held by us or our successors.

Yours very truly,
Universal Oil Products Company,
R. J. Dunham,
Vice President."

RJD:ME

881 Mr. Von Holst: The Court will recall that when Mary Egeler was testifying she referred to memoranda that had been sent in by Carl Otto Wannack while on his trip, and demand was made upon the plaintiff to produce these.

881 457 We offer in evidence as DX 234 the entire batch of memoranda thus produced by plaintiff consisting of 51 pages.

882 Mr. Hall: To make this arrangement between Universal and Behimer continuous, there was a release, if your Honor please, which we produced on the call, and we will put it in any way, but we think it would be more appropriate to put it in at the present time, and other side does not object, so we will have all the papers together. So at this time on behalf of plaintiff we will offer this letter of Otto Behimer to Universal Oil Products Company dated December 20, 1932, as PX 5.

PX 5 reads:

"310 S. Michigan Ave.,
Chicago, December 20, 1932

Universal Oil Products Co.,
310 South Michigan Ave.
Chicago, Ill.

Attention—Mr. J. G. Alther

Dear Sirs:

I have given consideration to our recent talk regarding my services and contract with Universal and have concluded to offer Universal on the conditions hereinafter set forth, the cancellation of its contract with
883 me, dated August 20, 1927, in consideration of the payment to me of Fifty Three Thousand Dollars ($53,000.) as hereinafter provided. If Universal accepts this offer it will leave my time free, which I desire, as I told you, but I wish to continue my connection with Universal in a limited way and accordingly my offer is predicted on the following conditions:

1. The sum of Fifty Three Thousand Dollars ($53,000.00) hereinabove referred to shall be payable as follows: Three Thousand Dollars ($3,000.00) upon the acceptance of this offer by Universal; and Fifty Thousand Dollars ($50,000.00) on January 3, 1933.

883 458 2. Universal's contract with me, dated August 20, 1927, shall be cancelled as of January 3, 1933, upon receipt by me on that date of said sum of Fifty Thousand Dollars ($50,000.00), which I shall accept in full satisfaction of all amounts which may be due to me, to and including January 3, 1933, pursuant to said contract, provided, however, that our mutual obligations and rights under paragraph (3) of said contract in respect of the period commencing October 1, 1927, and ending January 3, 1933, shall continue and remain in effect.

884 3. For an annual retainer of One Thousand Dollars ($1,000.00) per year for a term of five years beginning January 1, 1933, payable at the end of each quarter in installments of Two Hundred and Fifty Dollars ($250.00) each, I agree to devote twenty (20) days per

year at Chicago to the service of Universal in such capacity as it may require in connection with any inventions, improvements and development work of Universal and at such other place or places as Universal may direct. If Universal shall desire additional time, I agree to furnish such time as it may require at the rate of Fifty Dollars ($50.00) per day. Universal agrees to pay my actual out of pocket expenses during any and all time that I shall devote to Universal away from my home wherever it may be at the time of such service.

4. I will communicate and assign to you, or to whomsoever you may request, any and all inventions and improvements made by me solely, or jointly, with others, while retained by you pursuant to paragraph 3 above, relating to the treatment of hydrocarbons or carbonaceous or carbon-containing materials or
885 459 derivatives therefrom or products thereof or processes or apparatus for use in connection therewith, including both the United States and foreign rights, and I will not, without your consent, at any time during or after my employment by you, communicate to others any records, data or confidential information received by me while in your employ or so retained by you.

5. I hereby retain the right to execute all proper papers and to testify relative to all patents issued and all patent applications filed in my name prior to October 1, 1927, and now owned by former employers of mine or their assigns. Upon the request of Universal I will execute all proper papers and testify relative to such patents and patent applications and the inventions covered thereby as may be required by Universal in protection of its interests.

If this proposal is accepted I agree not to aid or enter into the employ, directly or indirectly, of any individual association, firm or corporation engaged directly or indirectly in the refining or treating of hydrocarbons for a period of five years from January 1, 1933.

This offer is made subject to acceptance within
886 ten days from the date hereof and upon its acceptance by Universal shall constitute an agreement between us.

Otto Behimer.

Accepted:
Chicago, Illinois, December 20th, 1932
Universal Oil Products Company
By: J. G. Alther
Vice President
Attest:
M. Carter
Assistant Secretary."

886 460 Mr. Hall: We have found an additional expense item of Wannak's which should have gone in with the others which we furnished you which amounts to $85.35, of August 7, 1925. We would like to turn it over to you at this time.

Mr. Von Holst: And this document just produced by counsel for plaintiff is offered in evidence as DX 235.

887 Mr. Von Holst: Now referring, your Honor, to these memoranda which plaintiff has produced, showing these expense accounts of Otto Wannack, there are many accounting references on these accounts. For intance, we find on one of them "Charge Texas Interference"; on others we find the words "Charge legal account"; on others there is a charge or credit to "O. W. account," "Litigation expense", "S. O. S.", "Employes working fund"; and repeatedly we find charges and credits, mainly credits to "C. P. Dubbs Special," "C. P. Dubbs Special Account". Repeatedly also we find charges or credits and mainly credits to "Interference 49355," and that is the Dubbs-Behimer Interference; "Reflux", then "Reflux 49355". Then there is one account that looks like "E. W. F. account". In addition nearly all of these memoranda contain voucher numbers, and therefore we have called upon plaintiff to produce the ledgers, books of account and journals relating to the following accounts, listing the accounts which appear upon these memoranda.

We also call upon them to produce the vouchers and checks drawn upon the voucher numbers appearing upon these memoranda.

We also called upon them to produce the books of

accounts, records, ledgers, journals et cetera, relating
888 to moneys paid to Otto Wannack during the period of his employment, and original files from the company to Carbon P. Dubbs or any other agent of Uni-
888 461 versal Oil Products Company. We previously asked for a check issued by Universal Oil Products Company on the basis of an expense account, rendered by Otto Wannack, dated September 4, 1925, on the memoranda of which appears the following legend: "Draw check to A. W. Lundahl and deposit O. W. account".

We also called for the reports, correspondence and telegrams by and between the Universal Oil Products Company and Carbon P. Dubbs and Otto Wannack, referring to or pertaining to investigations conducted by Otto Wannack in relation to The Texas Company. And we served plaintiff with a notice on the 27th day of May 1938, of our intention to move the Court on the resumption of this hearing for an order requiring the plaintiff to produce instanter upon the trial of this cause the above described documents, books of account, ledgers, journals and so forth. And we were informed by plaintiff's counsel at the time of the service upon them of this notice that they would not produce these unless ordered to by the court.

889 Our original communication along this line, with the idea of saving time, was in the form of a letter, asking them if they would produce the books referred to in these memoranda which they produced, and the other things in our notice; and upon their refusal we served them with the notice, and I should like to file the notice with the court, the notice and motion.

890 Now in support of the motion we suggest that the competency of these accounts is plainly shown by these charges which appear upon these memoranda, that link up these accounts with the subject matter of the Dubbs-Behimer Interference and with the various accounts which show that on the books of the company there must be other information than is contained in these memoranda. We think that it is highly competent.

Mr. Reichmann: Now, if your Honor please, this is a very sweeping motion made here, an excursion through all our books, ledgers, and everything of

462 that kind, and I want to show your Honor that we have furnished and are prepared to furnish in addition all of the moneys that were advanced to and spent by Wannack; but he himself has testified that he spent an aggregate of approximately $10,000.00, as your Honor will recall, exclusive of his salary of two or three hundred dollars a month, for the greater part of the time.

891 They called for the moneys paid to Mr. Behimer, directly or indirectly, and we furnished them a statement of that.

Now we had prepared in response to their letter and then this notice, but we had had it previously in response to their letter, an itemized statement showing the details of all the moneys that we paid or advanced to Wannack, either in the form of advancements for purposes of expenses, or salary, and all expenditures made by him out of those moneys. And I have here a copy of the transcript taken from our books.

Now we have no individual single ledger or other accounts in which all of these items are found. They are entered in journals and various other books, and therefore they have to be taken by our accountants from these various books that contain all sorts of other entries concerning which they are in no manner interested.

892 Now therefore, in the first place, we have here the gentleman who prepared the statement and will be able to show just exactly how it was prepared and that it is inclusive of everything, and all of those facts and circumstances.

Now I want to say also that this is the information that is given me by the accounting department, as to these various items:

463 "The Texas Interference Account" and then "The Interference 49355", and "Reflux" and "Reflux 49355"; are all different names given to the same account, that is, the account, Interference 49355, to which all charges made by the employes and the attorneys and experts, etc., rendered to the Univer-

893 sal in connection with the said interference, were made. It includes as one of the items the charges made by Otto Wannack, either in the form of salary or expenses, and it included all of these other various items, all the expenses in the way of attorneys' fees,

experts' fees and so forth and so forth, that had to do with that interference 49355. And of course we say that they should not be permitted to conduct an excursion through our confidential records, particularly in matters that may become material and important in the subsequent developments of this case. We don't know.

Now the "O. W. account", "Employees' Working Fund", they refer to there, the "C. P. Dubbs Special", and "C. P. Dubbs Special Account" and "E. W. F. Account" (meaning Employees' Working Fund Account), all relate, insofar as Wannack is concerned, to the C. P. Dubbs Special Accounts, that is, the account to which all advances of moneys made to Wannack as a working fund, were charged, and to which all moneys repaid by Wannack in reimbursement of advances, either in the form of cash or of statements of expenses, or withholding of salary, were credited.

894 "Salary would be charged to the Texas Interference Account, save for that part of the salary that was used as a credit against the advances in the working fund; in other words, the working fund account so-called C. P. Dubbs Special Account, will show on one hand all advances made to Wannack from time to time, and on the other hand all his expense accounts which were credited to him, and all the salary that was credited to him against the advances.

The Texas Interference Account will show those
464 items plus the salary and expenses which were not credited to him in the Dubbs Special Account."

They all finally go into the general or interference account which is a general account which all of these items go to ultimately.

" 'Legal' is a general account which appears on one or more of the original Wannack expense accounts, but the expense account was not charged to 'legal', the charge having been corrected by the Accounting Department when it received the expense account."

I think, if your Honor please, that without looking at it, for instance this statement received from Wan-
895 nack would pass into the hands of Dubbs, then he would note where it should be charged. Now, improperly, he noted, charge to legal, and they caught it in

time and did not enter it in that form but put it in the proper account, expense account.

Mr. Von Holst: Of course, your Honor, that is not testimony.

Mr. Reichmann: I know, but I want to show your Honor what we will show with the witness available here.

I just want to say, the same is true of "litigation expenses S. O. S." which are the expenses, which means the old Standard Oil suit, the old suit under J. A. Dubbs Special. That has nothing to do with this case in any way, shape or form.

Now when these first arrived they were marked chargeable to that account and most of them were corrected by the Accounting Department although when the Accounting Department made the statements
896 of the accounting to Wannack it checked through that account to make sure that there were none left charged to it, and if there were they were included as properly having belonged to Texas Interference Account and having been at that time mischarged.

Just a word or two more, your Honor, then I want to address myself directly—

896 465 To establish the statement, the Accounting Department, looked through the C. P. Dubbs Special Account and had the original expense account of Wannack,—the expense account of Wannack, your Honor, that is those that we gave to them,—such as have been furnished to the defendant and made a cross check between the two, and further checked through the Texas Interference Account between the date of employment and discharge of Wannack and obtaining a list of all vouchers bearing either the name of Wannack or Dubbs Special Account.

In addition to the salaries, they cross checked with their journal entries of salaries.

So we have here available, if your Honor please, this statement—

897 I have been reading from an explanatory statement that was given to me by the Accounting Department that I present to your Honor to show why you are not entitled to this fishing expedition and general excursion through our books.

The Court: May I ask this question before we go

any farther? How would the evidence of the manner in which these items were charged on the books of the company be helpful to the Court in determining this question of unclean hands? Now it has been shown that money was used, it is charged improperly; that has been shown, that money was used. What difference does it make on this issue of unclean hands how it was charged on the books of the company?

Mr. Von Holst: It might make a very material difference, your Honor, what charges are shown on those books.

The Court: I don't see it. The question is whether he spent money improperly, whether improper methods were used.

898 Mr. Von Holst: That is true.

The Court: I do not see that it makes any difference to me in determining that question how or in what manner the company charged that money, whether it charged it to the legal account and it should have been charged—the question here is whether the money was improperly used. What difference does

898 466 it make?

Mr. Von Holst: Why, it is also a question of tying it up with the subject matter of the interference.

The Court: I do not see how that helps me to determine this issue of unclean hands.

Mr. Von Holst: There is another point, and that is, on the amount. Of course the books are the best evidence as to the amount.

The Court: Yes, I know, but you cannot go on a general fishing expedition.

Mr. Von Holst: No.

The Court: You cannot say, "Why they spent this much, perhaps they spent a great deal more, therefore we are going to go through their books and find out how much they did spend".

Mr. Von Holst: Let me make it plain, your Honor. I think we have been in the practice long enough not

899 to presume to ask your Honor for a general fishing expedition through their books. All we want to do, and they are at liberty to seal these books, there is only a narrow period, that is from the beginning of 1926 until the fall of 1926, and that is the only period that we are inquiring into. Of course we have no interest at

all in seeing the rest of it. Now we do think that we ought to be entitled, the practice is not new, I have a case here in Pynchon *versus* Day, where a similar demand was made. Of course it was on an accounting, and the court ordered that the books, except those pertaining to the pertinent period should be sealed. That is in the 118 Illinois—

Mr. Reichmann: We have all kinds of other charges, they are not segregated.

Mr. Von Holst: Now these charges they have produced are these memoranda and it is quite significant that there are so many charges and I am sure that while Mr. Reichmann was reading the accounts, it made my head spin. Now why, in the ordinary legitimate transaction, would there be this multitude of charges? Here one time there is a charge or credit
900 467 to O. W. Wannack, another time to Dubbs Special Account, and another time Interference Account, and so on and so forth.

The Court: I do not think that makes any difference. You have shown that money was used, and as you say, improperly, and the question for me to determine after a while is what effect this all has, and assuming the money was improperly used you have shown that. You have shown the activities of these men and the use of the money. You have shown everything that ever was done there, and I do not think that it would add anything at all to the case to bring these books into evidence.

Mr. Haight: It is always a dangerous thing—

Mr. Reichmann: In addition to this, your Honor, their own witness has testified it was approximately $10,000.00.

The Court: Yes, he has testified to that.

Mr. Reichmann: In response to their request, and we think they have made many unreasonable requests, but rather than fight with them about it, we have done this, we have here a statement that our witness under
901 oath will say is inclusive of everything, if they want, showing that it is approximately $10,000.00 exclusive of salaries.

Mr. Hall: I understand your Honor's position, and it seems to me it is the substantial position in the case,

that their own witness has testified to the amount of money he spent. And we haven't denied it. Now, apparently they are going to try to contradict him in some fashion.

Mr. von Holst: He only gave his best recollection.

The Court: He gave his best recollection. Supposing it was wrong, suppose he spent 15 or 25 thousand dollars, it doesn't make any difference. If $10,000.00 was used in a manner that it should not be, that is enough.

904 468 Mr. von Holst: We offer in evidence the letters produced by plaintiff in response to our notice to produce that are quoted with names blanked out in the interference files as DX 236-A, 236-B and 236-C.

Mr. Hall: Your Honor, we object to them. We cannot see that they have the slightest relevancy, but I suppose you won't take time to argue it out now.

905 469 OTTO BEHIMER, 321 North East Avenue, Oak Park, Illinois.

Direct Examination by Mr. Theiss.

I am testifying here in obedience to a subpoena. I am now employed by no one. I have been in the employ of the Universal Oil Products Company. I entered the employ of the Universal Oil Products Com-
906 pany about September 15th, 1927, but the contract of payment was dated back to August 1st, 1927. I actually started work about the middle of September, 1927, in Chicago. There was no actual work before that time except some discussion as to what we were
907 going to do, and such things as that, while we were in California.

Prior to the time that I was employed by the Universal Oil Products Company I was employed by The Texas Company. I worked for The Texas Company from the latter part of October, 1915, to about August the first, 1927, chiefly at the Port Arthur works.

Prior to that I worked at the Kansas City testing laboratory for Dr. Walter and Dr. Roy Cross. There the work was rather varied. Some of it was general
908 laboratory work, and a considerable portion of it was

concerning the cracking of oils and the tests on different grades of oils. I had considerable experience at the Cross laboratories on the cracking and refining of oils.

I received a Bachelor of Arts degree at the Kansas University, and took one year's post graduate work at Harvard College.

909 At The Texas Company's plant at Port Arthur, after a few weeks of just general laboratory
909 470 work, I began experimenting with the cracking of oil for the purpose of developing a process for making gasoline. The majority of the work done for The Texas Company was in the developing of processes, gasoline processes, and allied work. I reported to my superiors; in some cases it was the head of the laboratory, and other cases it was the manager, the vice president or president of the company.
910 These gentlemen were Mr. VanGundy, Mr. Detweiler —they were both chemists—Mr. R. C. Holmes, Mr. F. T. Manley, and Dr. D. W. Gray.

The work on development that I did at The Texas Company ultimately resulted in the production of a commercial cracking still that was used by that company. My endeavors at The Texas Company were directed both to the development of ideas of my own, and also developing other people's ideas. The experiments pertaining to the coil and drum were chiefly my own.

912 Mr. Hall: We will admit that Mr. Behimer was a highly skilled man in this line.

The Witness: I was fairly well acquainted with the prior art at that time.

Referring to the file wrapper of an application which was filed in the joint names of Holmes, Manley and Behimer, Serial No. 263562, Exhibit 176, and particularly the original oath filed in this application, I executed that oath as of the time shown on this paper. I also signed a subsequent oath contained in this application, stating that I am the sole inventor of the subject matter of this application.

913 Q. Now, prior to the time that you signed these oaths, did you carefully consider the disclosure and claimed matter in this application with counsel, in order to satisfy yourself that you were, as a matter

of fact, the sole inventor of the subject matter disclosed in the application?

915 471 I acted on the advice of counsel for The Texas Company after this had been given considerable consideration in the first case. In the second case it was after a thorough investigation was made of the facts and considered by legal counsel and I acted on their advice. I participated in the consideration of the facts and in the discussions. As far as I was
916 concerned, I thought that I was the first inventor on this particular case, and always believed that I was the sole inventor of the subject matter disclosed in this particular case. In these discussions that I had with counsel for The Texas Company, where the inventorship was changed, I went over the records of the early experiments and thoroughly familiarized myself with them again in order to determine the fact that I was the sole inventor.

919 DX 177 is application serial No. 630242, which is a division of application No. 263,562, and which resulted in the patent 1883850. In this application I also filed an oath stating that I was the joint inventor with Manley and Holmes, and later an oath stating that I was the sole inventor. This application 630242
920 was involved in an interference with the Dubbs patent 1392629.

Mr. Theiss: Well now, in that interference you signed a preliminary statement setting forth the various dates of your invention. When you signed that preliminary statement, did you carefully go over your work so as to be positive that that preliminary statement definitely set forth the facts as they existed?

922 A. So far as I remember, that represented the facts as we had gathered them through this investigation by Mr. McCarthy.

922 472 Mr. McCarthy was the man that was employed to go through the facts in 1926 when the question who was the inventor in this particular patent came up. R. J. Dearborn and William Donaldson collaborated
923 with me on the preparing of the preliminary statement, and went over these facts. At that time I prepared a statement or running account of my work so that these papers could be properly prepared. I do not have a copy of that statement. I went over the

names of the various helpers and assistants that helped me on this experimental work that resulted in the applications and supplied the names to the officials of The Texas Company. The head of the research laboratory, and Mr. R. C. Holmes and D. W. Gray
924 and Mr. Manley all were instrumental in this experimental work. I was in direct charge of the experimental work which resulted in these applications.

Prior to leaving The Texas Company I was ap-
925 proached about entering the employ of the Universal
926 Oil Products Company first by Mr. Robert Kerr, and later by Carbon Dubbs. I know a Mr. Murray. I do not remember that I was approached by him before
928 I was approached by Mr. Kerr, not as to employment. I have a recollection of him talking to my wife and also myself but it was not concerning working for the Universal Oil Products Oil Company. One of the things was concerning an affidavit he made to The Texas Company, and I believe one time when he was at the home he said he was employed by the Universal Oil Products Company but further than that I don't remember. I think I said something about this conversation with Mr. Murray to Mr. Tom Dellinger of The Texas Company. Later I remember being called
929 to Harlingen. In the latter part of the spring my father was very ill and I was called from New York on account they thought he would not live. And then later, I think in July, I was called again and I was there a few days. On this visit I don't remember talking to anybody about employment of me by
473 Universal. I believe maybe my father said that he had met some oil men but there was nothing said about anyone wanting to employ me or anything of the kind. I am positive that there was nothing said about employment there by any other company. My
930 parents said nothing about Mr. Dubbs or Mr. Kerr being down there. There was no names mentioned. I was of the opinion that my father had been very ill and he had had kind of a relapse, and I went down there. I don't remember that after I was down there I talked to Mr. Dellinger about certain overtures being made to my parents about my changing.
931 At the time that Mr. Murray talked to me about this affidavit and so on, I did not know about the activities of Mr. Wannack in approaching employes

of The Texas Company to obtain information regarding my experimental work. At this last session of the Court here is when I learned the most of that that I knew about this. I knew there was something going on but I did not know what was going on. Mr. Beyt told me that he had been contacted by some-
932 body but he did not say who it was. I knew very little about Mr. Fantz' contact with the Universal. Mr. Fantz was the chief mechanic of The Texas Company up until about 1925 or thereabouts. I did not know about the activities of a Mr. Olsen at that time. I learned of Mr. Olsen in California in about the latter part of August, 1927. I knew nothing about him before that.

933 I recognize an affidavit I made about August, 1926.

Q. Does that refresh your recollection that you knew about the activities of Mr. Beyt and Mr. Brunow and these other people about that time?

A. Tom Dellinger was the man who was looking after this and I presume I was just as a witness here, I knew very little about this.

933 474 Q. But you did know that activities were going on, did you?

A. I knew there was some activity, I did not know hardly anything about any of the things because I was not in touch with it, did not bother with it. But I did know the fact.

934 I knew nothing about the affidavit that Mr. Beyt made about his dealings with the Universal Oil. I haven't any recollection that Mr. White reported to me when he first contacted Mr. Wannack. I would not say he did not.

There was a meeting in Harlingen arranged by Mr.
936 McCluskey. Mr. William McCluskey, an old school friend of mine, called me over the telephone from Harlingen and said he had met some oil men that he thought it might be to my advantage to meet. And I was rather reluctant to go, and he insisted that I come down and spend the week end because he was visiting with Mr. Thompson and my father there. Well, as a result of our conversation over the 'phone I left Port Arthur to go to Harlingen about August the 13th or thereabouts, and I was there I think until about the 23rd of August. And during this time I was there, I met first Mr. Robert Kerr, and later

Mr. Carbon P. Dubbs. I hadn't been there but a short time until they—I think Robert Kerr,—presented a proposition as to employment with the Universal, and then a few days later I met Mr. Dubbs at the First National Bank at Harlingen, Texas. The first proposition was practically the same as in the
937 contract, as to the amount to be received annually, and the bonus, that was never changed. Then as the discussion went on, I think my father suggested, being as I was going to move, "You would probably be at some expense, probably living expenses higher, you may want to buy a home, you better put in the contract an advance of some kind so that you would be able to incur any extra expense or do what you want to do after moving." That was later incor-
937 475 porated in the contract; that is an advance of $25,000.00 against the bonus.

Now another proposition that came up was as I had been connected with the patents of the Texas Company, what would be the proper thing to do in a case like that. And that was discussed with Mr. Dubbs and he seemed to be very favorable on that, that is fair to The Texas Company, that is to cover them so I could appear as a witness or testify as to the prior patents as to the facts and the information, and that was finally incorporated in the contract.

Then the next thing I insisted on, I wanted to take
938 a vacation. I had been working continuously, our vacations were usually more trips than anything else for The Texas Company. Mr. Dubbs suggested he preferred I start to work for the Universal as soon as I could, and he preferred to offer a vacation to us for a month in California, for myself and my wife. And that was done.

The other things in the contract were, I think chiefly made out by Mr. Dubbs which appeared to be acceptable. I left Houston August 13 and I returned to Houston on the 24th, so we discussed these various features from the 14th to the 23rd inclusive. The first one I talked with was my father. I do not know whether my father had discussed the $25,000 bonus
939 with Mr. Dubbs prior to that time. I never discussed the bonus with my father myself.

Q. I want to show you a telegram marked DX 228, a telegram from Mr. C. P. Dubbs, and in this

telegram Mr. Dubbs says: "Please telephone my house I will be Harlingen, Texas, Hotel Reese, Wilmont until I wire otherwise stop account poor 'phone connections and all doors and windows wide open and everyone in hotel hears I give up trying to 'phone you but it may be very necessary to pay the twenty-five thousand bonus in spot cash and any delay would be very serious hence when time comes I or Kerr
939 476 will wire you to have Continental Chicago telegraph same to First National Bank Harlingen".

Now that is a wire sent by Dubbs on July 20th. Do you have any recollection at all about the $25,000.00 being talked of before? Mr. Dubbs apparently had
940 it in his mind on July 20th. Does the telegram refresh
941 your recollection?

A. I knew nothing about it. I knew nothing until after August the 13th. What they might have done, that is something else.

Q. And on July 20th, 1927, do you know where
942 you were? Were you in Port Arthur?

A. I told you in July I went down to Harlingen. I cannot tell you now the exact date. I was down there a few days.

As a result of this meeting at Harlingen and the signing of this contract, I resigned my position with The Texas Company. I think about August 24th, just before I left for California I mailed my resignation. This contract that I entered into with the Universal was drafted down at Harlingen at that time. This contract covering the ten year period would pay me for the ten years $225,000.00.

943 I then went direct from Harlingen to California. I did not go back to Port Arthur. I went to Houston but I had to go to Houston in order to go to California. I was accustomed to traveling around and my wife did go to Port Arthur to get ready to go. I did not. She left Harlingen and went to Port Arthur and got prepared and met Mr. Kerr and myself in Houston. There was a reason why I did not go back to Port Arthur and notify The Texas Company. I think this was the suggestion probably of Mr. Dubbs. anyway, we discussed it and it being as I was—if I should go back to the company there could be somebody maybe trying to get records or something of that kind, and I would not be subject to—we decided,

944 talked this over with my father, and I think it
944 477 was Mr. Kerr and Mr. Dubbs, and after talking it over, I felt myself it was the best thing not to go back to The Texas Company unless they wanted me back to finish up some work that they might have needed—that should be finished. I never went back to Port Arthur during that period. And the only indication The Texas Company had that I was leaving was this letter of resignation that I sent from Harlingen. Then I left for California.

945 Mr. Kerr, my wife and myself were in the party that went to California. The first night in Los Angeles we spent at the Biltmore Hotel. My parents were told to get my mail into the hands of the Universal Oil Company and not to say anything about where I had gone. They were not to say anything
946 about it. That is, they were not advertising it. I had made up my mind after a long siege of this discussing this proposition, that I was going into the employment of the Universal Oil Products Company, that was decided, and I did not want any comeback that might be made from my former employers or anything of that nature, and it was merely to cut off any disturbance where might be, complications. I did not want them to make me a counter proposition. I had decided. While we were stopping at the Biltmore in Los Angeles I know I met Dr. Roy Cross but I would not swear as to Scofield. I am pretty
947 sure he was there. When we went in to dinner that evening they were sitting at the table, and I went over to the table and spoke to Dr. Roy Cross and talked with him a little while, and met Mr. Scofield, and I think, it seems to me like more than one in the party, but I don't know, in fact I did not know Scofield well enough to recognize him.

We went to the Virginia Beach Hotel after that.

Q. Did you do that because you did not want to have Mr. Scofield and Cross know where you were?

A. No. The plan was to spend the night there and then we were going over, as I understood Mr. Kerr was making the arrangements, then we were to go over to the Virginia Beach Hotel.

947 478 I do not know a thing about how I was registered at the hotels. Mr. Kerr did the registering for myself and my wife. I made no inquiry as to

948 how I was registered. My mail that was sent to Harlingen would go to Chicago and the Universal in Chicago contacted the mail. The Universal had an arrangement whereby we should receive our mail. Mr. Kerr was a man employed by the Universal Oil Products Company; as to how to describe his work, I don't know, but he was one of the men that I had my negotiations with. Mr. Kerr and Mr. Carbon P. Dubbs. I could not tell you whether the registration
949 at these hotels was made in such a way that The Texas Company should not find me out there. I was not looking after that part at all. That was a vacation as far as I was concerned. As to the representatives of the Universal Oil Products Company that I met in California, Mr. Kerr and Mr. Dubbs were there. I believe Mr. Olsen was there, I would not swear to
950 that. I met Mr. Hall here at the Ambassador Hotel. I guess lawyer Murray was with the Universal Oil Products then, and his wife. I met them at the Ambassador Hotel.

In Los Angeles, I stayed over night at the Biltmore when we arrived, and we stayed about a week in the latter part at different hotels, in Hollywood. From
951 the Biltmore we went to the Virginia Beach Hotel. That is in Long Beach. Then I am not certain but I believe we went to the Hollywood Hotel in Hollywood. We left Houston August 24th and we left California about the middle of September for Chicago.

I met the personnel of Universal Oil Products Company in the Los Angeles office during the period that I was there. I met Mr. Hall at the Ambassador Hotel. And I remember Mr. Dubbs telling him that I had done some work for the Cross people and he said later he might want to talk to me.

952 479 Off and on we discussed what I had done at The Texas Company. I discussed that with Mr. Dubbs. I did not have a single record there at that time to discuss with him. I don't remember a single record that they had. They did not have any record that I saw. They may have, I don't know. I think occasionally in discussing the work I made some disclosure of the character of the work I had been doing for The Texas Company. I did not give them an affidavit at that time in California regarding the
953 work that I had done. I have given them an affidavit

respecting it. After returning from California, my wife and I were visiting or staying with Mr. Dubbs at his home in Wilmette. And during that time I drew some sketches, brief sketches of the work that I had done from the time I went to The Texas Company until I left, showing the apparatus; and then after that they made up drawings, they made a very brief statement or affidavit to accompany the drawings. I do not have a copy of that affidavit now, or of the drawings.

Mr. Theiss: We would like to call upon the plaintiff to produce the drawings and that affidavit.

Mr. Hall: Your Honor, before this affidavit goes in, we want to be heard about its admissibility.

976 Q. I just want to call your attention to your letter of resignation, DX 182, and ask you whether
977 you composed that letter or whether somebody else wrote it for you?

977 480 A. I do not remember the exact details. I know we discussed the letter. I think Mr. Dubbs and myself, I think my father was there, when we discussed the wording of it. I do not know just what part I—it was rather the joint result of the conversation, that is what I would say.

Q. Did you dictate the letter or did somebody else dictate it and hand it to you for signature?

A. I have really forgotten just how it was done. I know we discussed it.

Q. Now, I wish you would just read the letter DX 183 to refresh your recollection, then I want to ask you some questions. Following the receipt of that letter, did you meet with Mr. Dearborn in Chicago?

A. Yes, a few days after that Mr. Dearborn called at the Universal offices. Besides myself and Mr. Dearborn I think Mr. Dunham, I am not sure of the others, and I think Mr. Dubbs was there. When Mr. Dearborn called, I told him that it had been customary in The Texas Company to have a separate department to take care of the legal matters, and as I had always been concerned with the facts and in the development work and that most of the questions that would come up from now on would probably be mostly of a legal nature, I felt that I had to have legal counsel the same as I had had in The Texas Company. And

his answer to that was, I think, after talking over the attorneys, I think Mr. Reichmann, as I remember,
979 was originally decided to be my attorney, and it was perfectly agreeable with Mr. Dearborn. But I must say after that for some reason or other Mr. Reichman did not take care of the work, and Mr. Thomas was the man that finally looked after the work.
979 481 The conversation was that we were to go over it with the counsel selected and sign up the papers where it looked like they were entitled to it. In other words, I was submitting these matters that Mr. Dearborn was talking to me about to the counsel of the Universal to go over. I only told him the factual part of it that I could handle; the legal part I would have to rely upon legal counsel.

980 Q. Now, I show you DX 184, letters from Mr. Dearborn to you with the contract attached to DX 184-A. Will you state whether or not that was the matter of discussion at this meeting we have just referred to?

A. Yes, I personally asked him to send this. I just wanted that merely as a record, I never did have a copy of this, I wanted this to know what I had done when I was with The Texas.

Q. Did you talk that over with your counsel at the Universal?

A. No, I don't think this had anything to do with it.

Q. I now show you a letter, the date being November 5, 1927, DX 187, which you wrote to Mr. Dearborn, in connection with some of your applications. Was that letter a letter that was composed and suggested by your counsel at the time, or was that a letter that you wrote yourself, and when I say your counsel, I mean your Universal counsel?

A. Yes, this was after discussing the facts, this was the result of the discussion. It was written by Universal counsel and I signed it.

Q. Do you know why it was that in this DX 187
982 you did not discuss at all the amended preliminary
982 482 statement that Mr. Dearborn wanted you to sign, and merely referred to the applications?

A. Well, all that I know it was they were not ready to decide on that or had not come to any conclusion.

Q. That is, Universal counsel had not?

A. That is right.

984 Q. I now want to call your attention to DX 196, your letter to Mr. Dearborn under date of March 27, 1928, and I want to ask you whether you composed this letter or whether this letter was also composed by Universal counsel and you signed it?

A. This was composed by Universal counsel after we had considerable discussion. As I remember, this was composed at Newark at the Robert Treat Hotel, and as I remember, Mr. Belknap and Mr. Thomas were the advisers.

Q. And do you remember what was said in those discussions? Do you remember the substance of what was said by Mr. Belknap and Mr. Thomas and by yourself?

A. Well, not much more than what is in the letter here, that is, I gave them the facts as near as I knew how to give them, and they asked questions,
985 and then they drew the legal conclusions. Mr. Belknap was one of the chief patent attorneys, I should say, of the country and of the Universal Oil Products. He is now dead.

Q. Now, you say this letter was composed in Newark. What were you doing in Newark at that time?

A. At that time, as I remember, the Adams patent was being asserted by The Texas Company against
986 the Universal Oil Company in the Warner-Quinlan case. I was acting in an experimental capacity, that is, not this time, but later, we took temperatures, you know, in tubes and things like that down
986 483 at Coraopolis, and then looking through some of the old art and different things.

I was helping the Universal in the suit by The Texas Company against the Universal. I did not collaboration with the Universal in other litigation that were involved in to any great extent. I did with the Cities Service, I believe, in 1930, about; I
987 made some observations on some of their experiments, and then in 1929 in the Dubbs versus Cross interference I testified as to the work that I had done with Cross brothers at the Kansas City testing laboratory. This litigation work was a minor part of my work for Universal.

When I first came with the Universal I was in hopes there that I might be able to do something in the

cracking, because at that time people were getting very much concerned about anti-knock gasoline, and I started reading the literature first, getting familiar with their plants, and what they were making, and then tried to set up a general scheme of it, that is, a plan whereby we might find some patentable features, or if we did find them, we would have a basis to cover them, and then set up an equipment that might run down the different factors that might affect the anti-knock properties of gasoline. I filed
988 three or four patent applications while I was in the employ of the Universal. There was only one that has been granted. While I was in the employ of The Texas Company I filed a dozen or two dozen patent applications, about twenty-five or thirty.

Q. Now, in the first paragraph of this letter that I have just called to your attention, DX 196, you
989 say that: "These letters have not been answered because I was advised by Mr. Thomas that he had conferred with you and it was agreed that because of certain existing conditions, which need not be referred to here, I should refrain from replying until I was advised to do so." What did Mr. Thomas tell you, with you and it was agreed that because of certain do you remember, why you should not answer?

989 484 A. I think he told me, but I don't remember what was the reason at that time. I have no recollection of that.

Q. Now, you then go on to say: "I have just been instructed by Mr. Thomas to answer your letters in full, and accordingly am replying at this time." What did Mr. Thomas tell you? What instructions did he give you, do you remember?

A. The thing is that really the instructions are in the letter there, that is, to answer the letter as answered. There were no written instructions to me from Mr. Thomas.

990 Mr. Haight: If Your Honor please, in reference to Mr. Behimer's affidavit, I make this offer, that we turn over this affidavit to counsel for the other side at the conclusion of court today—the affidavit is comparatively short—and they examine it with a representative of ours. They know from a year's study or more of Mr. Behimer's work through the records of The Texas Company exactly what his work

was, and so forth, so that they can, if possible, if there is any discrepancy, which we do not think there is, bearing in mind, of course, that the affidavit was made by Mr. Behimer purely from memory nearly ten years after the work was done, or eight or nine years, or something of that kind—if they find any discrepancy they can cross examine Mr. Behimer on it in the morning, or if they do not want to cross examine him they can introduce those particular facts that they think are discrepancies in evidence, that particular part of the affidavit, and then we, of course, would have it explained if it was susceptible of explanation. But let them see the affidavit; let them go over it. They have got Dr. Rittman here, their expert. We will go with them, and they can sit there and
991 work to their heart's content on it tonight.
991 485 Mr. Theiss: That is satisfactory to us.

Mr. Theiss: Q. In this letter, DX 196, that you have just read, you stated that you cannot sign the amended preliminary statement, and that if you had it to do over again you would not sign the original preliminary statement in interference?

A. Yes.

992 Q. Will you please refer to the original preliminary statement in interference No. 55610, DX 179,
993 and the amended preliminary statement which was sent to you and returned by you with DX 196, and is DX 197, and state in what particular they differ that caused you to say you could sign one and could not sign the other?

A. Well, as I remember it, the original preliminary statement was really the result of the investigation of the facts made by McCarthy, and they set as the limit between February 25, 1916, and November 6, 1916, as taken from factual records as the time during which the conception and the sketches and the disclosures to others were made.

In the amended statement they wanted me to tie
994 this down a little closer. They did not furnish evidence to me so that I could establish the date of disclosures to others as July 29, 1916 instead of between February the 25th and November the 6th, and for that reason I did not sign—that is one of the reasons I did not sign the amended preliminary statement.

Q. Now, the dates as to reduction of practice and

the other dates are the same in the two preliminary statement, are they not?

994 486 A. They are the same. I told you I was acting under the advice of counsel. I presented the same facts, or as near as I knew how, to the Universal attorney that I presented to The Texas Company attorney. It is a question about whether a little apparatus was a reduction to practice, commercial reduction to practice.

Q. And what did the Universal Oil Products Company attorney tell you with respect to the work that you did at The Texas Company; that that was not

995 a reduction to practice?

A. This experiment 8, or this early experiment in 1917, was not a reduction to practice. That was their advice.

Q. And with The Texas Company you were advised that it was a reduction?

A. That it was a reduction.

Q. And what is your belief today? Do you think that your original preliminary statement is correct, or the statement in this letter?

Mr. Haight: I object to that. That calls for a question of law. I do not think the witness ought to be asked to express an opinion on a question of law.

The Court: It is a question of law. He acted upon the advice of his counsel in each instance, and did not have an independent judgment on that subject at either time, as he says, so he could not be expected to have it now..

Mr. Theiss: Well, at the same time the witness is supposed to sign the oaths; does sign the oath as to those dates, and he should be satisfied in his own

996 mind as to whether one statement or the other one is correct.

The Court: That what constitutes reduction to practice is, in part at least, a legal question, and he would have to rely upon advice of counsel as to that.

996 487 Mr. Von Holst: Of course, your Honor, that question is a question of ultimate fact which entails a question of law, like "Are you married?" Well, marriage is a fact, but it is also a question of whether you have gone through the requisite formalities, and when an inventor makes the statement that he made a re-

duction to practice, he is supposed in his preliminary statement to be stating facts.

The Court: Well, he has stated here—it is a mixed question, and he has stated he relied upon the advice of his counsel in making the statement each time.

Mr. Theiss: Q. Well, Mr. Behimer, will you tell
997 us the conversation that took place between you and the Universal Oil Products Company respecting this reduction to practice?

A. I can only do it generally. I described the apparatus as near as I knew, and the operation, and
998 they questioned it on account of the size. It would probably take a good deal of work, maybe, to reduce it to a commercial size still. It was questionable whether this was a reduction that would be reducible to practice without some improvements of some kind.

Q. Well, did you state to them at that time that you discussed this same thing with The Texas Company attorney and they told you it was a reduction to practice?

A. Yes.

Q. And what was said about that?

A. Well, the only thing I remember as to that, it was a very debatable question.

The Court: The lawyers disagreed?

A. Yes.

Mr. Theiss: Q. And you took the advice of the Universal lawyers at that time?

998 488 A. I acted in that matter on the advice of counsel, the same as I acted when I signed this patent in three names when I was working for The Texas Company. I relied on the attorneys of The Texas Company in legal matters, and I told Mr. Dearborn when he first came with the papers that I would have to have the advice of counsel on things of a
999 legal nature. All I could do was to give the facts as near as I knew how to.

Q. Did you have any conversation with the Universal counsel at the time that this was discussed about the jet pump?

A. Well, the jet pump was discussed, I know, when I first came with the Universal, and I think it was discussed also—I don't remember specifically what was said about it. It was a question as to the

workability of it, whether it would work, and such things as that.

Q. Had that question come up with The Texas Company when you were there, when you were still in the employ of The Texas Company?

1000 A. That question had come up, in a way. I don't think it came up on the question of the workability of it, but they did test the equipment out. They rebuilt the equipment in 1925 or 1926.

Q. After the interference had been declared in 1923 or 1924, didn't the question come up about the operability of that jet pump while you were still with The Texas Company?

1001 A. It was after that date, yes. I cannot remember the exact time when it came up, but it did come up at about the time of 1925 or 1926 as to rebuilding the equipment.

Q. Well, didn't you know at the time that you were still with The Texas Company. that the Universal Oil Products Company in this interference was contending that that jet pump would not work?

1001 489 A. I would not swear that I knew that.

Q. Have you any recollection of composing and drafting a long memorandum to prove that that jet pump did work for The Texas Company?

A. That was in 1925, along in there.

Q. All right. Then you knew that it had come up?

A. That did not come up in the Universal. It came up in the legal department of The Texas Com-
1002 pany. I don't know anything about the connection with the Universal. I know the legal department for some reason wanted to rebuild the equipment, and it was absurd to me, the idea that they thought it would not work, and I wrote up a dissertation on the reason it had to work, I have always been convinced it would work or it did work in that particular case.

Q. Well, was it or was it not your understanding that if that jet pump in experiment No. 8 would properly function, that that experiment 8 was an operable device and a reduction to practice of the
1003 process disclosed in your application?

A. Probably personally I might have thought that, that is, I have always thought and always knew

the jet pump worked. It was just a question of other phases of it. As far as the jet pump is concerned, there was no reason or question at all in my mind but what that worked.

Q. Did you have any question in your mind about other phases of the apparatus not working?

A. Well, there was carbon troubles; there was a question of velocity, or two, and a lot of factors that was not absolutely known.

Q. But you were satisfied at that time that would work, were you not?

A. Personally I was very prejudiced toward the apparatus and the process.

1003 490 Q. You say prejudiced toward it?

A. Favorable toward it.

Q. Now, referring again to this time when you entered into this contract with the Universal at Harlingen, did you or your parents or any other member of your family receive anything of value from any third person for which you did not have to pay compensation other than the consideration
1004 recited in the contract as a result of your entering the employ of the Universal Oil Products Company?

A. Nothing to my knowledge, other than this vacation to California. I worked for the Universal under the terms of the contract for the first five years. I was actively engaged by the Universal during those five years. The great bulk of the time I was there regularly for the entire five-year period. I only spent
1005 time at my farm at Harlingen when I was on Christmas vacations and when my father and mother were sick. They were getting very old, and I always made it a point, whoever I was working for, to go in case I thought I could be of any benefit to them.

During this five-year period, outside of the time that I spent on litigation work that I have testified to, my chief work was on development work on anti-knock. That was the principal thing I worked on. The other matters were incidental.

In December of 1932 I canceled my employment
1006 contract with the Universal Oil Products, dated August 20, 1927. I remained under retainer to the U. O. P. for the next five years. I am not still under retainer to the U. O. P. I am under retainer to no oil company today. I have no retainers at all.

I have no knowledge of any correspondence with any representative or attorney of the Universal Oil Products Company other than that which I have
1006 491 identified, regarding the invention disclosed in the Behimer applications involved in these interferences 55610 and 49355.

Q. Since your employment by the Universal Oil
1007 Products Company in August, 1927, and prior to December 1st, 1937, have you held any conferences with officers, attorneys or agents of The Texas Company regarding the invention disclosed in the applications involved in these two interferences 55610 and 49355, except those referred to hereinbefore, regarding the signing of your amended preliminary statement that you refused to sign?

1008 A. About March in 1937, when I was in Harlingen, Texas, Mr. Dearborn and another Texas Company attorney had been on a vacation down to Mexico City, and they called up from the hotel in Brownsville just to see if I was down there, and they came by to the hotel the next morning, and Mr. Dearborn incidentally mentioned or asked about my employment and whether I would be free, and I told him that I was under retainer with the Universal and of course I would have to testify or do what—because I had it in my contract, but I would prefer not to be on both sides of the case, and it would be preferable to me if they would wait until my contract was out.

Well, I had had no correspondence or discussion with them until about two weeks or the middle of December, 1937, and I believe I made two trips, and they wanted me to go through the records and to be of any assistance or get at the facts and get familiar with the work that had been done in The Texas Company, and I made several trips since then, just a
1009 short trip, in trying to assist them and revive my memory concerning the early work. I made five or six trips all told since December 15th, 1937. The first trip, I just merely found out what they wanted.
1009 492 They wanted us to go through the records and become familiar with this early work, to identify and to suggest anything I could to help them in compiling or getting at the information. It was purely a factual proposition.

1011 Q. Did The Texas Company ever ask you prior to the time you have mentioned in any way assist them or give them any information other than in connection with these things that have been referred to, the interferences?

A. I have no recollection of them calling on me for any extra evidence, which in several of the letters was invited.

Q. Did you say anything to the Universal Oil Products Company, its lawyers or representatives, at the time that you went to New York in December of 1937? Did you get their permission to go?

1012 A. I told Mr. Dearborn; that is, I would do nothing that I did not inform the Universal Oil Company about, because I believed or I knew they would permit it; I had it in the contract, and I would not do anything that would not be perfectly above-board. I called Mr. Alther after I returned.

Q. Now, before you went to New York did you get permission from the Universal to go to The Texas Company and help them in these proofs?

A. I did not in that case. That was just a few weeks before my contract expired. I went of my own volition, and I think I was pretty safe in going, that

1013 it was all right. I signed a disclaimer with respect to the counts involved in Interference 49,355 in the latter part of 1931. I acted entirely under the advice of counsel, and was advised that it was satisfactory to the parties concerned. I think Mr. Gary was the man who advised me it would be all right to

493 prepare and sign it. It had been discussed with The Texas Company and was agreeable to all the parties concerned, so far as I knew.

Q. Did you discuss it with The Texas Company?

1014 A. Oh, no. I just discussed it with Mr. Gary, and he suggested that I sign the disclaimer, and I did.

Q. Did you know that when you signed this disclaimer in this interference between yourself and Mr. Dubbs, that the interference would be terminated and that Mr. Dubbs would obtain an award of priority to those counts? Was that explained to you and did you know it?

A. Well, it was not explained very carefully. I think I read the claims and saw what they were about at the time. I don't remember—

Q. Did you know that you were giving up your rights to those claims?

A. Why, of course, I knew it was a disclaimer.

Q. Well, did you object to that at all?

A. I made no objection. I merely followed the advice of counsel. Referring back to the time that I discussed this matter with Mr. Kerr and Mr. Dubbs
1015 in Harlingen, I don't think I told them at that time what my salary was with The Texas Company. I am definite about that, I believe. They did not know what I earned. When we got into the proof, I took the Texas Company's side, and the other parties that I knew were interested in my welfare, I let them take the other side and let them prove that the Universal Oil contract was better than my employment conditions with The Texas Company, and to my mind that was true. I considered it better and took it.

494 Q. In July of 1927 did you have any knowledge of the fact that suits were pending against The Texas Company, and that Dubbs 629 patent was involved in interference 49355, and that your experimental work had been set up in the answer as a prior invention?

A. I knew there was a suit by Universal. I cannot answer definitely whether I knew exactly what
1016 the suit was. I knew some of the patents that were in my name was concerned in the litigation.

Q. Did you have any knowledge of the fact that your work was set up as a prior invention to Dubbs, or don't you remember that?

A. The details I do not remember. I knew it was
1017 involved in a suit. I don't know the exact conditions.

1018 Mr. Thiess: Q. But you do know that in that litigation your early work was set up as a prior invention?

1019 A. Yes, I can say that. The disclaimer I signed was signed by The Texas Company when Mr. Lee Gary showed it to me. The application was owned by The Texas Company.

1021 495 In my testimony yesterday I stated that when I was in California I had some discussions as to what I was going to do, and things of that character. I think one proposition that we discussed was the Lincoln-Clark process, but there was not weighty discussion, but it was concerning the vapor phase cracking processes. I won't say that is the only thing

we discussed while I was there. This was a vacation and the business part was merely incidental. At the time there were about four or five Universal representatives there with me, but I was not there on
1022 any business they were concerned with. I met Mr. Hall there, but I had nothing to do with the business. I don't even know what his business was there.

I talked with Mr. Kerr and Mr. Dubbs and Mr. Murray and the rest of them. We were just visiting, that is all.

My discussion with Murray—it was merely visiting, but with Mr. Dubbs, as I told you, we discussed, as I remember, the Lincoln-Clark process that I told you about. I can't remember exactly everything.

There was something said about my experimental work, but not to any great extent; not at all after we returned from there. I returned to Chicago about the 16th of September.

1023 When I reached California and on until the time that I returned to Chicago, I was in the company of Mr. Olsen for part of the time, and Mr. Kerr practically all the time. Mr. Dubbs was not with me all the time. I met Mr. Dubbs in Long Beach, I think, for the first time after I arrived in California.

After I got back to Chicago, we went directly to Mr. Dubbs' home in Wilmette.

Q. Now, you testified yesterday that you had
1024 made a statement with respect to your experimental work for The Texas Company?

A. I did.

Q. I hand you this document and ask you whether this document is the document which you referred to that contains that statement of your experimental work.

496 A. I made a statement to them at this time,
1025 and on a casual looking through it I believe it to be the statement made to them. There is a few pencil notes and notations that was made evidently after, and not to my knowledge.

I have not seen this statement since I left The Texas Company to enter the employ of the Universal.

Q. Now, in referring to this apparatus which constitutes the basis of the two applications that you have referred to here, which was known as experiment 8—that is right, is it not?

A. That is right.

Q. You say in this statement:

"During the runs on the coil and drum apparatus the backtrap was returned continuously to the preheater, with the charge, as was evidenced by the character of the distillate, the testing of the distillate, on some runs, and also in other runs by a comparative test of the distillate and backtrap. The operation was fairly smooth but it was evident that the
1026 equipment was not properly proportioned. The flow of charge and backtrap was too small in quantity for a three inch pipe and consequently the oil was retained in the coil for too long a period which gave more decomposition than was desired, thereby causing some carbonization of the coils. It was also evident that the velocity could be increased only by decreasing the size of the coil pipe and increasing the volume of the drum and the size of the air condenser, thereby increasing the quantity of charge as well as the backtrap returning to the coil.

"Notwithstanding the construction of the apparatus, however, the naphtha distillate was of good color and good quality and of low heat reaction and the rate of yield was fairly satisfactory. The seven runs were made on this apparatus during May, June and July, 1917, the runs lasting from 20 to 85 hours. In this small equipment the radiation losses in the drum would, of course, be considerably greater than in a larger commercial sized equipment. The gasoline produced in this equipment was measured off in five gallon cans and poured into steel drums. I believe
1027 that some of this gasoline was used by one of the stillmen, Mr. Pond, in his motorcycle.

"The following men worked on this apparatus during the time it was in operation:

H. A. Pond, Paul F. Terrier, E. T. Earnest, R. L. Murray, M. Becker and others.

497 "It was evident, that on account of the improper proportions of this coil and drum apparatus it would be necessary to carry a high temperature in the coil in order to maintain the desired temperature in the drum. On kerosene stock we were unable to carry sufficient pressure to obtain desirable cracking temperatures in the coil or in the drum, consequently the cracking rate was very slow. However,

in all the runs the backtrap was returned to the coil and cracking temperatures maintained in the coil and drum, and a satisfactory naphtha product obtained for fairly long periods of time. The tar was drawn off regularly so as to maintain a constant oil level in the drum, which tar was discharged to a separate tank and never returned to the system.

1028 "In all of these runs some cracking took place in the coil but the bulk of the cracking occurred in the drum. Although some carbon was found in the coils at the end of all of the runs, it was localized in the lower tubes, and in run #6 there was only a small amount of carbon. The cracking in the coil was due to the slow velocity of the oil through the coil, the comparative volume of the coil with respect to the drum and the radiation losses on the drum. Due to this small equipment it was necessary to carry a higher temperature in the coil in order to maintain the temperature in the drum and consequently some cracking took place in the coil, but the bulk of the cracking took place in the drum.

"One of the points of particular interest at the time was the condition of the coil during the different runs, and in order to determine this condition the equipment was shut down at times before it was necessary in order to examine the tubes and although there was a greater formation of carbon on the tubes than we desired, it was thought that this could be entirely eliminated by changes in the proportions of the equipment. In some of the runs where the coil temperatures
1029 were carried low there was very little carbon formation but in those runs where the temperature was purposely increased and an effort made to maintain this high temperature in the coil, there was considerable carbon formation. In most instances we found that the carbon was only in the lower row of tubes, and chiefly in the last tube of the lower row."

1030 "We found that the carbon in the drum was more of a soft soot-like nature while the carbon in the coil was more of a scale on the bottom of the tubes. This carbon deposit on the bottom of the tubes was due probably to the stratification of the heavy residuum oil on the bottom of the tube and the vapors above, indicating that the velocity was not sufficient to thoroughly mix the oil and vapors.

"The operation of this coil and drum apparatus was discontinued, first, because of the difficulty encountered in overcoming leakage in the coil, second, because the drum would not stand sufficient pressure, and, third, because we had made sufficient runs on
498 the apparatus to give us the idea of design of a semi-commercial equipment so proportioned as to overcome the above difficulties."

Now, when you wrote that statement, was that your
1031 firm and true conviction as to the results that obtained and what you could do with the process which you had developed?

A. It was.

1032 The first work that I did when I got back to Chicago and went out to Mr. Dubbs' home was to discuss the work that I had formerly done with The Texas Company, to make drawings with the help of two draftsmen from the Universal Oil Products Company, and then later on to make out a statement to accompany the drawings.

As to who worked on the affidavit that I made at Mr. Dubbs' home, there were the two draftsmen and Mr. Dubbs was present. I think Mr. Kerr was present most of the time, and Mr. Olsen was there a small part of the time. I do not mean living there; I mean they were present, that is, all of them were not living there.

Q. But they were all present on this work?

1033 A. They were all present, yes. Just a minute, I would like to correct that statement. Mr. Kerr and Mr. Olsen had nothing to do with the drawings nor the statement in any way.

It took us about three weeks to prepare the statements that are contained in this affidavit that I made. Mrs. Egeler typed it up. It was dictated. I started to dictate it, then later we took up each subject and discussed it, and then Mr. Dubbs assisted me in that dictation.

1034 The drawings were practically completed before any dictation was made. I made all these drawings from memory. I had no records. It was entirely a memory proposition, excepting one drawing, and it is mentioned in the affidavit as a drawing of the jet pump. I have seen this affidavit recently and there are quite a number of drawings in it.

1035 499 The affidavit purports to show the chief and important experimental work concerning cracking that I did at The Texas Company. This was prepared in the form of an affidavit. I believe it was Mr. Dubbs who suggested that I make this affidavit. I never gave The Texas Company an affidavit of this character.

Mr. Dubbs said I could have a copy of this affidavit but I never had a copy. It was kept, as I understood it, in the Universal vault or wherever they keep documents of that kind.

Q. Now, in this affidavit that you prepared for
1036 the Universal Oil Products Company with Mr. Dubbs, did you also describe this No. 8 experiment that I just read to you your description out of your statement that you made for The Texas Company?

A. There is a brief description of it.

Mr. Thiess: Q. Now, I would like to read you what you said about this same apparatus in the affidavit:

500 "My recollection is that some time after I had completed the seven runs on this experimental apparatus No. 8, also known as 'coil and drum experiment' in August, 1917, that Mr. Ernest had the ejector or jet pump taken down and taken apart and drawings made therefrom, but I cannot say
1037 whether the attached drawing on page 43-C, marked 'Reproduction of Experiment 8 of 1916'—'Assembly of jet pump' is a drawing of the jet pump I used, but my recollection is that in principle it is similar.

"My object in carrying this experiment out was to first pass the raw oil through heating coils, first passing it through the jet pump which would carry the kerosene reflux condensate from the aerial condenser, back through the heating coils with the raw oil and I figured this would subject this reflux condensate to a repeated prolonged heat treatment and as this kerosene vaporized at a lower temperature than the raw oil, it would form a frothy mixture in the heating tubes and thus increase the velocity through the heating tubes. By this means, I had hoped to prevent such carbon deposits on the inside of the heating tubes as had been experienced on the original No. 8 experiments. I had also hoped that by

sending the raw oil through the heating tubes and this refluxed kerosene condensate, that the two combined would maintain a suitable cracking temperature in the drum so that the cracking of the oil would
1038 be carried on in the drum, but I found this was not the case and so reported to, I think, Mr. Dodge, in writing him a summary of experiments, I think in the year 1921.

501 "In carrying out the first five of the runs on light gas oil of about 37 gravity, in this apparatus, difficulty was experienced in the production of carbon in the tubes when I reach a suitable cracking temperature, so much so that in one of the runs for some reason I do not now recall, the lower heating tubes of the coil were almost completely clogged with carbon, forcing me to shut down. In operating this plant in these runs on gas oil I was unable to obtain any suitable yields of gasoline without deposits of carbon on the lower row of tubes, and the naphtha distillate obtained varied considerably in gravity and boiling points; nor was I able to prevent carbon from depositing in the coil and maintain a suitable cracking temperature in the drum.

"I then attempted to make a couple runs on kerosene in this apparatus, as requested by Mr. F. T. Manley. In these tests I used a 42 gravity kerosene
1039 and held about 300 pounds pressure on the apparatus. These two operations were failures. I could not prevent the kerosene from vaporizing before reaching a suitable cracking temperature in the drum at 300 pounds pressure, and I did not increase the pressure as the apparatus was not built for a higher pressure.

"In the first run on this kerosene, it was more of a distillation process and the condensate came over so fast that it was of a very low gravity, it being more like a distillate from the kerosene and contained very little gasoline.

"In the second run on this kerosene I reduced the charge of raw oil very greatly, thus prolonging
502 the time it took the oil to pass through the heating coil, but the rate of distillate obtained was so low and the results of these two tests were so unsatisfactory that I did not feel justified in making

any further tests and dropped the experiments in this apparatus.

"I had a great deal of trouble with gaskets leaking during the operations of this apparatus and it was so sensitive that I had to draw the dis-
1040 tillate from condensing coil to the receiver intermittently so as not to drop the pressure on the plant too much.

"In the first run or so, I tried partially closing the valve on the jet but found it apparently made no difference so I left the jet open to the degree of at least three turns of the wheel handle of the valve.

"After the above tests were made, neither I nor anyone else ever operated the apparatus again, and as needed I used parts of this apparatus for other experimental apparatus.

"During the above enumerated runs the operators made records on loose sheets and which data either Mr. Pond or myself copied in a note-book, which note-book I turned over to Mr. Dearborn about 1926, and either Mr. Detweiler or myself made reports on these runs to Mr. R. C. Holmes at Houston and Mr. F. T. Manley at Houston and Port Arthur, Texas, at that time, or very shortly after."

Now, in order not to load the record with some stuff in between on other experiments, I will pass to page 43 and read at the bottom of that page:

1041 "At that time, I myself was not sure whether the process would be feasible from a commercial stand point, as I recognized from my previous experiments,

I was troubled with the carbon depositing in the
503 heating coil and was unable to maintain the oil

at a suitable cracking temperature in the drum and that it may be necessary to apply such amount of external heat to the drum that I would still have to contend with the difficulty experienced in applying external heat to said drum; therefore, nothing further was done and this plant was never built."

Now, would you consider that statement correct and true at the time that you made that for the Universal Oil Products Company?

A. I did.

Q. Now, in that statement that you made for the Universal Oil Products Company, didn't you state

that you did not think the apparatus was feasible for commercial purposes?

A. I said I was not sure.

Q. Do you consider the statement that you made in the affidavit, that you made for the Universal, the same and of the same purport, as far as your operation and work was concerned, as the statement that you made for The Texas Company?

042 A. The only difference that I see, in the statement, it only recites the more adverse side of it, and the favorable part is just not stressed in it. That is the only thing lacking.

Mr. Thiess: Q. In the affidavit you presented the unfavorable side?

A. I presented the other. Just for some reason or other they did not cover it, or we did not cover it.

504 Q. Do you know why you injected the unfavorable side in the affidavit that you prepared for the Universal?

A. Well, I don't know of any reason. The thing is, I was giving information. I could not give all the information I had to The Texas Company. I was giving such information as they seemed to be interested in.

Q. That is, to the Universal?

A. The Universal, yes.

Q. Now, Mr. Behimer, I note in this description
043 of this experiment No. 8 in your affidavit for the Universal, you do not mention the withdrawal of the residuum. Will you see whether you can find that and tell why you did not put that in?

Mr. Hall: You mean to include the drawing? Of course, the drawing shows it very clearly.

Mr. Thiess: No, whether he has got it in his written description.

Mr. Thomas: The drawing of the apparatus has it standing right out there prominently. It is there.

Mr. Thiess: I am just asking whether he has got it in his written description.

The Witness: I do not see anything pertaining to that. As I remember it, there is nothing said about it. There is many other things that is not included.
044 There are very many things, even the jet pump. I do

not see anything in there about that, anything about the yields, or the character of the product. This
505 is a very brief description, and it does not cover the operation in a complete way. It would take a tremendous report to give this so it would satisfy everybody.

Mr. Thiess: Q. Well, did you consider the withdrawal of the residuum an important and vital part of your operation?

A. Why, sure. You could not have a continuous process without it. This is a continuous process. It is self-evident.

Q. You say this is a rather brief statement. You testified yesterday that you made drawings and a very brief statement or affidavit to accompany the
1045 drawings. Now, this affidavit is ninety-five pages in length, is it not?

A. Well, that is almost nothing in comparison with the files.

Q. And it contains very elaborate drawings of each?

A. The drawings are the most complete part of it, I would say, and there are, of course, inaccuracies, because I could not remember all the details, but generally I think they are fairly accurate.

Q. I would like to also call your attention to page 71 of this affidavit, referring to "Reconstructed Experiment 11-B operated from early part 1920 to about Xmas 1922," where you say:

"After finishing the experiments known as Experiment 18 in November or December, 1919, I
1046 506 had a new experimental apparatus built as shown on the attached drawing marked 'Experiment 11-B Reconstructed.' This was built at the same location that the original 11-B apparatus was built, and I made the first run in it about the early part of 1920.

"One of the main objects in building this plant was to experiment and to find a means of forcing the back-trap or reflux condensate back through the heating tubes, and succeeding in this, then to operate and ascertain what could be done when I had found proper mechanical means for returning this reflux back to the heating tubes."

Do you remember making that statement in that affidavit?

A. That is not said as well as it should be. The purpose of that experiment was to find the best means, try out different means, and if that conveys the idea that we were trying to find a means, that is erroneous.

Mr. Hall: You see, that statement, if your Honor please, was way after Mr. Behimer had filed his application in the Patent Office, consequently he had the benefit of that statement—of that application in the
1047 interference with us. We could not change that.

The Witness: If it means, as I said, that we did not have any means, that was erroneous.

Mr. Thiess: Q. Now, in this statement that I read you, this excerpt that I read you from the statement that you prepared for The Texas Company, you concluded your description of the operation of
1047 507 this Experiment No. 8, on which the applications you have identified are based, by this:

"The operation of this coil and drum operation was discontinued, first, because of the difficulty encountered in overcoming leakage in the coil; second, because the drum would not stand sufficient pressure, and, third, because we had made sufficient runs on the apparatus to give us the idea of design of a semi-commercial equipment so proportioned as to overcome the above difficulties."

Now, can you find any statement of similar import in this affidavit that you prepared for the Universal Oil Products Company?

Mr. Haight: I object to that.

1048 The Court: He may answer.

A. I think in this statement I said I was not sure. When I say a thing is sure, it is absolutely beyond doubt, and in this—in experimental work you are never sure of anything until you absolutely get the commercial equipment built.

Q. Can you find that sort of a statement, of the type that I have just read you out of your statement that you made for the Universal?

A. I told you I was not absolutely sure. It is put in a negative way. As far as I was concerned, I thought it worked—there is no question.

Q. Can you find such a statement in the affidavit, and will you read it to us if you can find it in the
1048 508 affidavit that you prepared for the Universal?

Mr. Haight: I object to that. Suppose he cannot find it. What difference does it make? He was not covering everything or attempting to cover everything in the statement made to Mr. Dearborn a number of years before.

1049 The Court: I will take that into consideration, but he may answer whether or not he finds anything.

A. I cannot find a similar statement. Well, as I see it, on the bottom of page 43, one is stated in a positive way, and the other is stated in a negative way.

Mr. Thiess: Q. Will you read it?

A. "At that time I myself was not sure whether the process would be feasible from a commercial standpoint, as I recognized from my previous experiments, I was troubled with carbon depositing in the
1050 heating coil and was unable to maintain the coil at a suitable cracking temperature in the drum, and that it may be necessary to apply such amount of external heat to the drum that I would still have to contend with the difficulty experienced in applying external heat to said drum; therefore, nothing further was done, and this plant was never built." Mr. Thiess did not read this. This is concerning the proposed equipment to overcome the trouble of the first equipment, to overcome the carbon trouble, and get the velocity of the oil, and to maintain the temperature. These are conclusions from the results of experiment 8, in which we have shown a drawing of the proposed equipment.

Mr. Hall: Read the next page, please.

1051 509 A. "I was desirous of having this semi-commercial apparatus built so that I could carry on the experiments and determine the maximum temperature I could heat the oil to in the tubes without having deposits of coke therein. In this proposed semi-commercial apparatus I planned to use a much larger drum and a coil of much smaller diameter tubes and the plant having a greater capacity. I was counting on the velocity of oil through the tubes being much greater and this permitting the reaching

of the desired temperature in the tubes without deposits of coke therein, and thus be able to determine how much external heat, if any, I would then have to apply to the large drum to maintain the oil therein at the desired cracking temperature, and if the magnitude of heat applied to this external drum would be so great as to make the process uncommercial. I had planned that the semi-commercial plant would produce approximately five barrels of gasoline per hour and treating approximately twelve barrels of raw light gas oil per hour.

"Nothing further was done on the matter and the plant was never built."

510 Mr. Denison: The defendant now desires to
1052 offer in evidence, and does offer, first the statement which was read to the witness as being the statement which he made to The Texas Company; second, this affidavit which he made to the Universal Company. The offer at the moment is of the entire of each.

1072 The Court: I have heard both sides.

I shall sustain the objection to the introduction of the affidavit, on two grounds. First, in my opinion, the only parts that are material or relevant in this case are those parts, if any, which contradict the statements made by this witness to The Texas Company, and any such parts that may be offered I will admit, but I will not admit the entire document of 95 pages which may contain very much immaterial and irrelevant matter.

And, second, my understanding last night was that the book was turned over to counsel for Globe on the understanding that if that was done, just those parts would be offered in evidence which counsel found on examination he felt were relevant and material, and the book was not turned over on order of the Court. I doubt whether the Court would have entered any order for the turning over of the book. It was turned over by counsel pursuant to an agreement which the
511 Court understood as I have stated.

1073 Mr. Von Holst: The offer was two-fold, and we have argued entirely upon the second. We also offer the statement which this witness has identified as having been made to the Texas Company when he was in their employe, the entire statement.

1074 The Court: I cannot see the relevancy of the

whole thing. Those parts that have been read in the record are in the record.

I testified yesterday that beginning December the 15th, 1937, I made a number of trips to The Texas Company. The first trip was to find out about what they wanted. I spent somewhere near a week there. And then the second trip I went, I had a death in the family and I was called away before we got started. I was there I think about two days. The other trips would average about ten days from the time I left home until I got back. I suppose there was right close to twenty days probably I have been there at actual work.

I believe I made six trips. I spent over 30 days in New York on these trips for the purpose of working for The Texas Company. I was not paid a retainer by The Texas Company for this work. I was under the employment of the Universal Oil Products Company until the first of this year, and all I have asked from The Texas Company was the expense account, that is all they paid.

So while I was with the Universal, I was paid by them and after that I received no remuneration for my work in New York at all, excepting the expense account. Nothing has been said one way or the other as to whether I should be paid. The only thing is if I have got to testify about materials, I want to try to get the facts for my own self protection. Whatever is agreeable to them, we will do. I should imagine they will pay something.

Mr. Thiess: Q. Mr. Behimer, when you signed this affidavit for the Universal Oil Products Company, were you of the impression that in signing this affidavit you were helping the Universal Oil Products Company?

A. I don't—as I remember, what we were trying to do was to dovetail my point—to get ready to carry on experimental work, and we wanted to dovetail the experiment, that is this experimental work and get familiar with the Dubbs cracking processes and then go on to improve this independent work. That was one of the functions—then as you say, this affidavit, they probably put other reasons in it.

Mr. Thiess: That is all. I want it understood, that is all subject to our having more access to this book.

Mr. Haight: It is agreed if you get further access and want to recall Mr. Behimer for further cross-examination on any inconsistencies between the affidavit and the statement that he made to The Texas Company, that you may recall him. In other words, you are not precluded, and in making that statement, I do nothing because the Judge would let you do it anyhow.

1081 Mr. Thiess: What I want to know is, will we get access to that book?

Mr. Haight: I am not saying that at the moment.

Mr Thiess: How are we going to be able to determine whether we can further examine—

Mr. Haight: I do not know whether you want anything further or not. We left it to see how the case progressed.

Mr. Thiess: In other words, at the present time, you refuse, you won't—

Mr. Hall: At the present we refuse. After we get through with this you may desire to make an application if we still continue to refuse.

Mr. Thiess: All right.

Mr. Hall: Or you may, after we get through with Mr. Behimer, be ready to concede you do not want it and to dismiss this branch of the case.

513 *Cross-Examination by Mr. Hall.*

1081 Referring to the affidavit I made for Universal:

1082 On page 43b in the lower right hand corner, there is shown a cooler with coil connected by valve to the bottom of the drum with the notation that the tar line at the outlet of the coil is connected to the run tank. This certainly would indicate to anyone that residuum was to be drawn during the run to the tankage. It clearly shows a residuum draw-off from the bottom of the separating tank. The word "tar" is used synonymously with "residuum." The word "tar" is not in the drawing.

1083 The reports made to The Texas Company to which reference is made in the affidavit for further particulars were reports of the individual runs. The specific details of those runs could be obtained from those reports which were made on or about the time

the operations were carried on. Experiment No. 8 was carried on in the summer of 1917. A report to F. C. Manley by Detwiler who was in charge of the research laboratories at the Port Arthur works, gives a brief summary of runs 6, 7 and 8 of experiment No. 8. These are the runs in which gasoline was produced.

In this report there is a statement reading "Remarks on run No. 7. The run was discontinued because of excessive leakage around the copper gasket in head to drum and around the riveted joint of manhole on drum." This was dated June 20, 1917. It is taken
1085 from an original pencilled notebook record made by me and is an accurate statement of what occurred.

514 Q. Now with reference to this same run in the same report appears this: "The two lower tubes contained considerable carbon on bottom of tubes." Now was the accumulation of carbon in the heating tubes? That does refer to heating tubes, doesn't it?

A. It does.

Q. And was the accumulation of carbon in the heating tubes generally recognized as being a baneful thing?

A. It was.

Q. Do you recall whether the operation or the condition which is there stated in the letter actually occurred during that run, the part I have just read, just referred to, called your attention to?

1086 A. Yes. Yes, sir.

Q. I show you a report of run No. 6, of this experiment 8, as I understand it, and you will please correct me if am wrong, wherein the statement is made: "The run was discontinued because of leakage." And the further statement is made: "Only the power tubes were carbonized and these contained a thin scale on the bottom. The drum contained little or no carbon." And as to run 8 it is said: "The run was discontinued on account of leakage."

Now do you recall that that is an accurate statement of what occurred?

A. I believe that is the notation that I made on the report, the pencil report.

1090 515 I recognize PX 8 as a copy of a letter I wrote Manley on August 10, 1917, reporting on run No. 9 of Experiment No. 8 on my small still.

1091 Q. And this letter gives the operating—certain of the operating conditions?

A. It does.

Q. And then ends with remarks as follows:

"This experiment, as previous experiments with paraffin base gas oil as stock, demonstrates that the lower tubes carbonize considerably and the run, consequently, is of short duration. This difficulty with paraffin base gas oil can probably be very much overcome; first, by lengthening the tubes so that it will not be necessary to carry such a high temperature in the furnace, and secondly, by increasing the velocity of oil and vapor through the tubes, so that the carbon will be swept along with the oil and the vapor in the tubes."

1092 Now, that states the conditions which you there found during that operation and your thought at the time in reference to a remedy for the conditions which had obtained, is that correct?

A. It does.

I recognize PX 10 as another letter, dated August 10, 1917 which I wrote to Manley about the same experiment No. 8. This letter gives operating conditions and results obtained using kerosene as charging stock. The remarks are as follows:

"The results are not very satisfactory because the conditions of rapid decomposition were never reached. Alterations and modifications will remedy this defect in the present apparatus for kerosene products."

1092 516 I wrote another letter, PX 9, to Manley reporting on run No. 11 of experiment No. 8, the
1093 second run using kerosene as charging stock.

1094 In this letter I stated:

"This experiment, as experiment 8, run 10, demonstrates that it is impossible to reach the condition of rapid decomposition in this apparatus. There must be more coil, more pressure and air condenser."

These reports were furnished recently to counsel for Universal by The Texas Company.

1095 All of the runs made, on this operation, except the preliminary run which was merely to test out the apparatus and did not reach operating conditions, are covered by these reports.

A full sized, commercial apparatus would cost from one hundred and fifty to two hundred thousand dollars.

Q. And ordinarily an oil refiner, having built and tried out a small experimental apparatus such as this one that you used in August, 1917, and if it gave some promise of success, what would he next do before reproducing it in a commercial sized apparatus?

1096 A. The next step would probably be a semi-commercial apparatus, that is, either a commercial or a semi-commercial.

Q. He would build what is called a pilot plant, wouldn't he, or semi-commercial size, to see whether he could get results therein comparable to those he had obtained in the small apparatus?

A. Yes, a pilot plant you may call it, or a plant of a larger size.

1096 517 Q. But he would not go right ahead from a plant of the size that you had and expend one hundred and fifty or two hundred thousand dollars in a commercial plant, would he?

A. He is not very likely to. He might.

The runs made in the summer of 1917 were made for the benefit of The Texas Company and were fully disclosed to the company officials, including Manley

1097 who was manager of operations at that time. Holmes was president.

Following the work of my experimental plant in 1917 they built a commercial experimental plant which consisted of two and one stills, with three batteries, and later they built a pilot plant with four stills in order to test the commercial plant of twenty-four stills

1097 518 which they intended to build later. Those preliminary plants and the twenty-four still plant were known as Holmes-Manley, and not Behimer.

The Holmes-Manley type of plant did not incor-

1098 porate the return of the reflux to the coil. It was not a clean circulation plant.

They spent many thousands of dollars installing that plant and started construction the latter part of 1919. They started operations in February or March of 1920. The original appropriation was for six batteries but before they were built there was an appropriation for twenty-four.

It is my recollection that prior to the time I made the affidavit for Universal I told Dubbs that this McCarthy, an expert practical blender, had gone over

1099 my work on my clean circulation still with me and others in The Texas Company.

No one, to my recollection, at any time since I met anyone connected with Universal, ever told me that I should tell anything other than the truth about my work with The Texas Company. I was told that I should always hew strictly to the truth in everything that I told in connection with my work for The Texas Company.

My meeting with Hall in Los Angeles was just a 1100 casual meeting. My work with the Cross people was brought up incidentally and Dubbs mentioned the fact that I had worked for them. I was introduced to Hall while he was playing golf on the grounds of the Ambassador Hotel. He merely stopped long enough to say that he was gratified that I was now with 1100 519 Universal. I never met Hall at all in any of the hotels in which I stopped in Los Angeles or any place else during the vacation to which I referred.

The twenty-four Holmes Manley stills to which I 1100- have referred cost approximately five or six million 1101 dollars. They were operated quite a while before any changes were made in them to incorporate my invention. The surge pump was installed on Battery No. 14 in the summer of 1921. The first battery was started in March of 1920 and therefore it was operated a year and three months before incorporating the clean circulation principle that I consider to be my invention.

Q. I believe your attention was called to a letter which was written on November 5, 1927, by you to Mr. R. J. Dearborn of The Texas Company, in which you made reference to certain applications for patents which had been sent to you for signature and which you declined to sign for various reasons, or some of them you did?

A. Yes.

Q. Do you recall that?

1102 A. I do.

Q. I am now going to submit to you a letter which reads as follows: That letter of yours was dated November 5, 1927, and the letter I am about to read is dated November 25, 1927:

"Mr. Otto Behimer
310 South Michigan Avenue
Chicago.

My dear Mr. Behimer:

"Your letter of November 5th did not come to
1102 520 hand with its enclosures until November 17th, and I will discuss the various cases as follows:

"1. This case as prepared was a true division of the original application serial No. 410623, filed August 6, 1920, and whether the claims are readable on that disclosure or not is purely a question of law.

"The time was so short that prior to the receipt of your letter we had introduced the claims by amendment in the original application, and this has the advantage of determining the very question which raises a doubt in your mind. If the claims are found to be in order and allowed to remain in the parent application, it will be unnecessary to file any division.
1103 If, however, they are found to be in order and division required, we will then re-submit the papers for your signature.

"2. This case has been sent forward for filing."

Now, that referred to the divisional application which you did execute and return to them.

"3. Upon checking this matter we find that you may be right, although the question is in doubt, and we may communicate with you later after a complete investigation has been made."

Now, that was in regard to the application in which you say:

"I am unable to take the oath that the invention disclosed and claimed has not been in public use for more than two years. I know that The Texas Company have had in commercial use for more than two years prior to the present date a conversion process where the charging oil is admitted to the heating coil
1103 521 at the inlet thereof, while the reflux condensate combined with said stream of oil at a point where such charging oil is at approximately the temperature of the reflux condensate."
1104 That was the reason you refused to sign that application?

A. Yes, I remember.

Q. And Mr. Dearborn told you that you might be right about that?

A. Yes.

Q. "4. This application has been sent forward for filing." That was the application you did sign, was it not?

A. Yes.

Q. "5. We think you are probably wrong in your conclusion in this case, and that the invention as operated was not in public use, but a plant scale experiment which continued under close observation for only a period of months. We are further checking the facts in this matter in order to refresh your recollection, and will probably re-submit the papers for your signature with a memorandum to refresh your recollection."

Now, do you remember receiving that letter from Mr. Dearborn?

A. I do.

Q. Now, did he ever re-submit those matters?

A. He did not.

1105 My attention is called to the preliminary statement I filed August 20, 1927 in Interference 55,610 in which I said I conceived that invention, made sketches
1105 522 and disclosed to others between February 25, 1916 and November 6, 1916. My attention also is called to the amended preliminary statement which said that I conceived the invention between February 26, 1916 and July 29, 1916, that I disclosed it to others about July 29, 1916, and that sketches illustrative of the invention were made in October, 1916. I declined to sign this last statement because it differed from the first statement that I had filed in this respect: the conception was put between the date of
1106 February 25th and July 29th, whereas in the first statement it was between February and November, and The Texas Company did not furnish me evidence to satisfy my mind that it was on July 29, 1916 that I disclosed it to Mr. Donaldson.

You call my attention to my letter in which I stated I declined to sign the amended statement and in which I said "I have no recollection or data available for refreshing it which would justify my making the allegation therein concerning conception, sketches and disclosure. Indeed, I now seriously doubt whether

these corresponding allegations which were made from information, an important part of which was given to me at the time I executed the original statement by members of the Texas organization, are accurate." The Texas Company did not thereafter furnish me with any data to justify the allegation made in the amended
1107 preliminary statement, and I never had any dispute with them about that matter.

The amended preliminary statement also says: "That he first reduced the invention to practice during the period from May 30 to June 1, 1917; that the
1107 523 invention has been practiced extensively on a commercial scale since that time." Regarding this, I said in my letter that I questioned the accuracy of the allegation in both the original and amended statements concerning the commercial use of the invention since the alleged reduction to practice. My explanation of that statement is that after talking it
1108 over with Universal's counsel, I told them that the next commercial use was on battery 14 in 1921. As I recall, they took exception as being continued over a long lapse of time. In other words, the inference to be drawn from the amended preliminary statement is that it was used continuously, but if it had not been used from May, 1917 until the middle of the year 1921,
1110 it looks like rather a long lapse of time. After having received my letter questioning the accuracy of the allegation concerning commercial use subsequent to the alleged reduction to practice, The Texas Company never furnished me with their idea of what this statement meant in the amended statement.

1111 After my vacation in California, I arrived in Chicago about September 15th and from that time to date I have always been accessible to anyone who wanted to find me. My name and address are in the directory.

Q. Now, at all times have you felt perfectly free to testify on behalf of The Texas Company or anyone else regarding the work that you did while you were with The Texas Company?

Mr. Von Holst: I think that is objectionable, and I object, your Honor, as to what his feeling was.

1111 524 Mr. Haight: That goes right to the very heart of the thing.

Mr. Von Holst: Let the Court judge that from the evidence.

1112 Mr. Neuman: The same thing is true as to whether he was accessible or not. He is not the judge of that.

The Court: That is a question of fact. I think I will let him answer.

The Witness: A. I have always been free and it has also been written in the contract that I would be accessible to The Texas Company in relation to any of the patent work or any of the work that I have done in The Texas Company. Of course, I am not a willing witness. I do not like this kind of work, I mean, I do not want to be too willing.

Neither the Universal Oil Products Company, nor any of its attorneys, has ever said anything that would be in the way of my being free to testify on any
1112 525 of the matters pertaining to The Texas Company work, and in connection with my affidavit.
1113 nothing was said to me to try to influence me to make a false statement.

About a year after I completed this affidavit for the Universal Oil Products Company I was permanently located in the laboratories at Riverside trying to find out information concerning anti-knock and what kind of experiments to carry out later. I looked through literature and patents, visited plants and made tests of samples. I visited the Derby plant for quite a long period and took samples of all descriptions and anlayzed them in order to find the character of the products.

The first plant visited was between Christmas and
1114 New Year, 1927 at the Paragon Refining Company in Toledo. It was the first time I had ever seen one of the Dubbs coking operations. It was a Dubbs clean circulation plant. I did not take samples, but observed what they did, what they made, how they removed the coke, and tried to find out everything about the equipment.

After about a year I went to the laboratory of the Universal Oil Products Company where they have small laboratory equipment, semi-commercial equip-
1115 ment and various kinds of equipment for various kinds of experiments. The laboratories, shops, storerooms, etc., occupy 20 or 30 acres. At that time about 50 men were employed there, practically all of them scientifically trained college men.

1115 526 In a year of post graduate work that I took at Harvard, I took scientific work which was to be applied on a Master's Degree of Applied Sciences.

One of my jobs at the Universal laboratory consisted
1116 in building a small unit which very accurately represented the results that could be obtained in one of these stills costing $150,000 or $200,000. This was used in my anti-knock work. The apparatus was so attractive that it was appropriated by a part of the laboratory that had to do with the testing of samples taken from the wells of various refineries throughout the United States for the purpose of ascertaining what yields could be made in a Dubbs plant. The Sales Department kept it busy and we had no apparatus and no time to make our experiments for the more fundamental work. It war considered a very valuable machine.

1117 After that we built another piece of apparatus of the same type and practically the same size, but so arranged that it could be operated either as a single or double coil. This equipment probably cost about $25,000. I worked on it for a considerable period.

I voluntarily severed by connection with Universal
1118 because my wife took cancer and since the doctor did not give any hope of her living, I figured I could not do justice either to my company or to my home. For that reason I thought it was better to discontinue the work. I was always welcome around Universal and always felt at home there.

527 Just prior to leaving The Texas Company my regular salary was $10,000 a year in the beginning of 1927 and on top of that I received stock allotments amounting to about 70 shares a year at a price below the market.

1119 PX 6 is a letter dated January 14, 1927, and written to me by P. C. Scullin, Vice President of The Texas
1120 Company. In this letter he states that beginning January 1, 1927 they are increasing my salary to $10,000 a year, that they appreciate my gasoline research work and that Mr. R. C. Holmes asked him to tell me that he is considering a plan in addition to salary which will give me more pay in the way of investment and income.

At or prior to the time I signed the disclaimed relative to my application, I had parted with my entire
1121 right, title and interest in and to that application and patent to The Texas Company. However, in 1932, on account of the inventorship being changed, they asked me for a new assignment, which I gave.

I knew that in signing that disclaimer I was complying with the request of The Texas Company. You show me a copy of an assignment (Part of PX 205) made by me of certain of my applications in 1932 to The Texas Company. I can identify that as being
1122 the one I just referred to and I fully lived up to that assignment in all respects.

In addition to my laboratory work for Universal, at times I also acted as technical expert in an advisory
1123 capacity for some of the attorneys of Universal. This was in matters wholly disconnected with the work
1123 528 I had done at the Texas Company. During the entire period I was with Universal I was fairly reasonably busy from day to day.

Q. You referred to the fact that this original application of yours on clean circulation was filed in the names of Holmes, Manley and Behimer. Did the inclusion of Holmes and Manley in that application have anything to do with the dissatisfaction that you felt about your relations, your employment by The Texas Company?

A. No.

Mr. Von Holst: Just a minute. We object to that. Your Honor, the witness has not said anything yet about there being any dissatisfaction.

Mr. Hall: All right. He said "No". Do you want that stricken?

1124 Mr. Von Holst: I did not hear him.

The Court: He said "No."

Mr. Hall: Q. Were you entirely satisfied with the relations existing during your employment with The Texas Company?

A. Well, of course, there is always periods of transportation in companies with which a person would be slightly dissatisfied, but I have no grievance against The Texas Company.

In the trial that I attended at Newark and assisted the Universal Oil Products Company in defending Warner-Quinlan in a suit brought by The Texas Company, the patent involved was one of the Adams patents and I had no connection with the Adams invention or the patent.

1124 529 Under my agreement with Universal and at my request I was to be prepaid the bonuses for the

first five years. My father and I asked Mr. Dubbs for the pre-payment of the bonus as one of the conditions of employment to be specified in the contract.
1125 This was done for the purpose of buying a home but the homes I looked at were out of sight and I could not buy one when the depression came. However, I did buy a home in 1933 at a reasonable price, located at 321 North East Avenue and have lived
1126 there ever since.

530 *Redirect Examination by Mr. Thiess.*

1126 In my cross examination, my attention was called to this drawing on page 43-B of the affidavit, which is a drawing I made to show the apparatus of experiment No. 8 and particularly to the pipe leading from the bottom of the chamber.
1127 Q. If you only contemplated drawing tar from the chamber at the end of the run, would you show that draw-off any different than shown on this drawing?

A. I think in the two cases it could be identical, but if you wanted to let the still cool down you would not need a water box, and probably on an experimental still instead of building an expensive coil and water box, you would probably let the still cool down and then empty it out when it is cool.

In a small still like this, it would cool off, say,
1128 in an hour or so, and you could draw it off.

It would be advantageous to draw it off at the end of the run before it cooled and got hard. It is a question whether you can in an experimental still. Commercially you would. The draw-off at the end of the run with a pipe and a cooler as shown in the drawing is a better method for drawing off at the end of the run, I will grant that, but it is not necessary in small equipment.

Q. But if you showed a person this drawing and you said nothing about a continuous operation, that would not indicate to you that it was a continuous draw-off, would it?

A. It would not be absolute, but I believe it would be a fairly good indication.

Referring again to this 95 page affidavit, the date
1129 of that affidavit is Octobed 5, 1927. That is the date

I signed it, and it was witnesses by S. Olsen and Lee J. Gary. Lee J. Gary is counsel for the Universal Oil Products and S. Olson was a man that I met in California and who was with us. The affidavit was notarized by Mrs. Egeler.

531 I have testified about these Holmes-Manly stills that were built and said they did not contain return of reflux and the clean circulation principle until 1921.

We did not return the reflux to the inlet of the coil but returned it to the stills in those Holmes stills be-
1130 cause we had not found a pump that would do the work. We were having difficulty getting a pump to operate on one of those large stills and as soon as we found a good commercial pump that would do the work, we put the pumps on as quickly as possible.

1133 I did not have the control over the building of these commercial stills. Whenever they considered what they are going to build, they would usually
1134 sit in conference, and they would listen to my suggestions. I don't mean that I was the only one.
1135 Many times my suggestions were accepted. The only reason that the Texas Company did not incorporate that clean circulation principle in those stills originally built was because there was not a commercial pump available at the time for stills of that size.

1136 As soon as the proper commercial pump for these commercial large stills was available, as soon as we could order them, The Texas Company equipped those stills with pumps.

During this period from the time that I had run
1137 this experiment No. 8, in my capacity as experimentor and investigator for The Texas Company, I was continually on the lookout for a pump that we could use in the commercial operation with the idea of using it for that purpose. These large stills were built by The Texas Company without the pump because at that time those stills could be built and operated in that way at tremendous profit. To my recollection they were very profitable.

1137 532 I was interrogated about the amended preliminary statement, and the fact that The Texas Company and Mr. Dearborn never got in communication with me after I wrote the letter that I would not sign it. I knew at that time that the time was

very short for the filing of those amended preliminary
1138 statements because Mr. Dearborn so stated in one of his letters. I did not know that, about the time that I wrote the letter, The Texas Company filed the amended preliminary statement through an officer of the company. I do know it now, or at least I think I do.

The language in the original preliminary statement beginning that "He first reduced the invention to practice," is identical in the amended preliminary statement.

1139 I knew when I signed the original preliminary statement that the Texas Company had not conducted any commercial cracking of any sort between May 1917 and March 1920. When I signed the original statement, I don't believe I gave it a thought whether the preliminary statement left an inference that there had been such a commercial cracking.

Q. Don't you think that statement as it is there stated clearly states and implies that that operation was used subsequent to 1917, and not continuously from 1917?

A. Well, I read it once here and then I thought that interpretation would leave the inference it was continuous, but that is a question.

Q. When you first signed it, you did not have
1140 that idea, did you?

A. I tell you, I read it over, I don't remember putting that construction on it or whether I put the other construction on it.

I first put that construction on it after I had read it later, when I was concerned with this trial. I mean, I never gave it serious thought as to what it might mean before I was in this trial.

1140 533 The two applications that I filed which I have identified here were both based upon the same experimental work, that is, experiment No. 8.

I have been interrogated about the personnel out at Riverside and I have stated that there were 50
1141 men there when I went out there, and they were all college graduates. About two dozen of those 50 men were still chemists.

1142 I went to Newark for the Warner-Quinlan trial
1143 in the early part of 1928, January or February. I was

on that work at Newark and at Pittsburgh from about January until about April or somewhere thereabouts.

1144 I identify a letter on The Texas Company stationery. I either received a copy or I saw the letter
1145 at the time or practically at the time it was written. It is a letter from Mr. Manley commenting upon my reports.

1147 Referring to the runs mentions on cross examination, on this report of experiment No. 8, run No. 9, I find at the end of the report this statement: "The product has qualities as good as the Burton product, and the decomposition can be effected very rapidly."

1149 On the report of experiment 8, run No. 10, there is the statement: "Alterations and modifications will remedy this defect in the present apparatus for kerosene product." "Carbon deposit was practically nothing."

The statement that I made for The Texas Company was not entirely dictated by me. We assembled the facts, talked that over, and it was couched in words sometimes by Mr. McCarthy, I think chiefly by Mr. McCarthy. This was done on May 10, 11 and 12, of 1926, at Port Arthur, Texas.

1150 534 In my cross examination I gave a reason which I said was the principal reason for giving up my work at the Universal Oil Products Company and cancelling my contract, indicating that there might be some other reasons. At that time we ran into the depression and most companies were curtailing their work and that might have had something to do with it too. I gave you the chief reason. Universal was curtailing its work at the same time and I volunteered to stop partly because the work was not enough.
1151 That is one reason I resigned, that might have contributed to my leaving. There was no other reason.

535 *Recross Examination by Mr. Hall.*

My letter of August 10, 1917 containing the statement that carbon deposit was practically nothing related to a run where kerosene was the charging stock. In this case you would not expect to get a carbon deposit because we would have had to have at least 500 lbs. pressure in order to get enough temperature

for sufficient cracking to produce carbon. The pres-
1152 sure we had was about 300 lbs. The equipment would not stand sufficient pressure to reach a high enough temperature to get a sufficiently high rate of cracking. We weren't getting any cracking. Therefore, whether we got carbon deposit or not did not matter.

Q. Mr. Behimer, this letter of March 27th, 1928, that you wrote to Mr. Dearborn in regard to the preliminary statement, contains a paragraph reading: "I further now question the accuracy of the allegations in both the original and amended statements concerning the commercial use of the invention in issue since the alleged reduction to practice thereof and would not now sign a statement containing such allegations." Now that statement was made in your letter of March 27th, 1928, and consequently could not have been made because of anything which was said to you during this trial.

1153 I am talking about the last paragraph where it relates to commercial operation. What was your reason for questioning the commercial operation as alleged in the preliminary statement?

A. I do not believe I have anything further to say about that.

Q. You don't recall the reason that statement was made?

Mr. Thiess: I object to that. The witness has answered.

1153 536 The Court: He may answer if he recalls.

1155 A. Well, the question as I remember it was the reduction to, or the commercial use of it, was suggested as I answered before, was a long lapse of time and it was about 1921, that is my recollection of the question.

Mr. Hall: Q. Now your thought was that at that time, at the time you wrote that letter, that the preliminary statement referred to continuous use since the date of the preliminary statement and you knew that had not occurred; is that correct?

A. You say, since the preliminary statement?

Q. Ever since the preliminary statement—ever since the reduction to practice—I am getting as bad as you are—continuous use since the reduction to practice?

A. Yes.

Q. You knew that was not so?

1156 A. I knew that was not so.

Q. And that was what you questioned?

A. That is right.

Q. Now, in reference to the Holmes-Manley still and the use of a pump, you had a pump on this small still in 1917, didn't you?

A. We had a pump.

Q. Yes you had a jet pump?

A. We had a jet pump and we had been trying to get a jet pump for some of the other equipment but we had not developed anything suitable to handle the back trap through the coil against the pressures that you would find in the commercial equipment.

1156-537 Q. Then you now say that this arrangement you had in 1917, in which the pump was a jet pump—

A. Yes.

Q. —was unsuitable for use in a commercial still?

A. That particular pump was.

Q. Yes, I mean, what you had in 1917 was unsuitable for use?

A. That is right.

Q. And it required a further invention by somebody to get a pump which would be suitable?

1157 A. No, I would not say that.

I did not know of any other pump that was suitable and did not know of anybody who did know of one that was suitable. As to whether I could have returned the reflux by having a sufficient hydrostatic head, it probably could have been done. I cannot answer from experience. It would have been subjected to the variations of firing and we would have gotten an irregular feed and probably at that time it would have been a very unsatisfactory method of operation.

538 *Reredirect Examination by Mr. Thiess.*

1158 Q. When I examined you just a moment ago, I asked you about your preliminary statement and the statement that Mr. Hall just called your attention to, and you told me that that never occurred to you until you came into this trial?

A. Well, that is the trouble. I got confused on

it. That was, as I remember now, the reason presented by counsel. I slipped up on that. As I remember now after this cross examination it was suggested at the time we went over this.

Q. Counsel suggested that to you, counsel for Universal?

1159 A. Yes, I gave the facts and they made the suggestion. I am trying to get at—

Q. They wrote this letter also, didn't they, Exhibit 196?

A. These letters were written by the attorney. I merely presented the facts, and I am trying to—

Q. Then you signed the letter, and it was sent out?

A. That is right.

Q. And at the time that you gave me that answer, you had forgotten all about that, and it was your impression that the first time that had come to your attention was at this trial?

A. I made a mistake.

Q. But that was your impression when you are answering me?

A. Yes.

1226 539 OTTO BEHIMER, Recalled as a witness on behalf of the defendant.

Direct Examination by Mr. Thiess.

Q. I want to refer you to page 65 of the affidavit which you made to the Universal Oil Products Company, and to the paragraph entitled "Experiment 18, Battery No. 3—with jet pump last run."

"The raw oil was fed into the plant through the tar heat exchanger, then through the economizer, and then just before it entered the preheater and back-trap, or reflux condensate, from the aerial condensers was brought back and connected at this point with the raw oil, the raw oil discharged through the jet at this junction, and was supposed to carry the reflux condensate and the raw oil through the preheating tubes and discharge this mixture into the bottom of the vertical still.

"I only made one run with this ejector, or jet

pump, using a light gas oil as a charging stock operat-
1227 ing the plant about two days and found that only from 1 to 1½ bbls. of the reflux condensate was being returned to the heating coils and the operation was unsatisfactory and further experiments would have to be made, and I so reported to Mr. F. P. Dodge and sent copies to Mr. R. C. Holmes and Mr. F. T. Manley."

Do you find that statement in your affidavit?

A. Yes, I remember that.

1229 Mr. Von Holst: We contend that the affidavit—the whole affidavit we believe is material and should go in, but we understand your Honor has ruled on that.

The Court: I have ruled.

Mr. Von Holst: Therefore, without waiving our main offer of the whole affidavit, we are now referring to your ruling.

1229 540 Mr. Thiess: Q. I also want to refer your attention to pages 72 and 73 of this affidavit where the statement is made:

"My recollection is that Mr. Fred Fantz designed the jet pump I used in these experiments. I made about four or five runs with the plant hooked up this
1230 way, but I am not certain that all or what portion of the reflux condensate was returned to the preheater coil, as the vapor line from the still to the aerial condenser was positioned so that the reflux from the aerial condenser could return directly back to the still through this vapor line in case the jet pump failed to work, and such failure of jet pump would not interfere with the operation of the plant. I then abandoned the jet as a suitable means for returning the reflux to the heating tubes and never again tried to use such a similar means on this apparatus. I
1231 then decided to try and develop other mechanical means that would insure all of the reflux being positively returned to the heating coils along with the raw charge, and on the attached drawing, page 76-A, marked

"'Experiment 11-B Various Devices For Return of Reflux to Preheater Coil.'"

This is reconstructed experiment 11-B?

A. That is right. It was operated from the early part of 1920 to about Christmas 1922.

1231 541 Q. Now I want to refer you to page 75 of the affidavit in which you discuss the surge pump, under item 6. You say:

"The next pump is shown on the drawing as Figure 6, and my recollection is that Mr. Witherup or Mr. Capen showed me a cut in a pamphlet of a Dow Surge pump, which was designed for handling hot
1232 oil under pressure and this seemed like such a good mechanical device for the wrok that I had Mr. White draw up a design and had the pump built and the design of this pump is shown on the attached drawing. An ordinary pump was used and long surge lines extended to two sets of check valves so that the hot liquid surged back and forth in these surge lines and never entered the pump proper, and this worked satisfactorily and for the first time gave me equipment with which to go ahead and return the hot condensed reflux back to the preheating tubes along with the raw oil."

Do you remember making that statement?

A. I do.

1233 Q. Then I would ask you this, Mr. Behimer, this statement that you made for The Texas Company in
1234 1926 that we called to your attention, that was made from memory, was it not? You had no documents before you at the time?

A. Yes.

The Court: You are referring now to what exhibit?

Mr. Thiess: It is not in evidence. They were not allowed.

Mr. Thiess: That is the one you identified here?

A. Yes.

Mr. Thomas: Show it to the witness.

A. No, this statement was not made entirely from
1235 memory. We looked up the records. Mr. McCarthy was sent down there as an expert to go through the records and find out who was the inventor, and the records and files were all accessible when this was was made.

1235 542 Mr. Thiess: Q. I wish you would just refresh your recollection as to that statement there, and see whether that refreshes your recollection as to how that statement was made. (Handing document to witness.)

A. Well, I may have this disconnected here. Ac-

cording to this the records were not used at that time, it is from memory.

Q. It is all from memory?

A. Yes, according to this.

1237 I remember having a subpoena duces tecum served on me some time ago. Among the papers that I was asked for is under "A":

"All correspondence and telegrams between Otto Behimer and Universal Oil Products Company, contracts, and documents of every nature or copies thereof, or if the originals are not in his possession—referring or pertaining in any way to the employment or retention by Universal Oil Products Company of Otto Behimer prior to or at the time he entered the employ of or was retained by Universal Oil Products Company in, to-wit, August 1927, or relative to services, compensation, bonus, gift, pension, cancellation of indebtedness or obligations,

1238 or present or future compensation of any nature in favor of or for the said Otto Behimer, Mrs. Otto Behimer, or Mrs. Anna Shackelton, or any appointee of Otto Behimer."

1238 I think that all the papers called for have been produced.

1239 There was another paragraph in this subpoena that calls for:

"Correspondence, statements or other documents in Otto Behimer's possession during the term of his employment by Universal Oil Products Company relating to the subject of priority of invention as between Otto Behimer and Carbon P. Dubbs, or to the subject of Dubbs vs. Behimer Interference No. 49,355, or to the filing of a disclaimer of Otto Behimer in said Interference."

1240 543 All I have is a copy of the signed disclaimer.

1255 Mr. Thiess: Mr. Behimer admits that the following statements are in his Universal affidavit and in the statement which he prepared for The Texas Company.

1256 Referring to page 82 of the affidavit for the Universal, to battery No. 14:

"In the summer of 1921 a surge pump was installed in Battery No. 14 and the condensate from the aerial condenser was led from the bottom drum of the first section of the aerial condenser through a line to the

intake side of the surge pump and then forced through a line from this pump connecting to the inlet side of the preheater at which point it was joined by the raw oil being fed to the preheater. Several different hookups were made in this connection, but finally the hookup shown on the attached drawing, page 83, is the one adopted and after a few runs the whole twenty-four batteries were equipped with surge pumps, as soon as the equipment could be obtained and installed and thereafter, all the plants operated with the condensate from the aerial condensers or bubble tower being forced back into the pre-heating coils along with the raw oil, and this mixture then discharged to the bottom section of the vertical stills just as before.

"After adopting the surge pump and operating in the way just described, using approximately the same kind of gas oil, the capacity and percentage yields and quantity of naptha distillate of the plant
1257 were approximately the same, but the length of run had increased from 60 hours to 120 hours or longer."

544 I now want to refer to pages 20 and 21 of the statement which Mr. Behimer has identified, which he said he made from memory for The Texas Company. In May, 10th, 11th and 12th of 1926.

"Subsequently different systems of check valves
1258 and ball check valves were tried out and later, when we heard of the Thompson surge pump, our efforts were directed along that line as we decided that the most feasible plan for commercial operation would be the Thompson type of surge pump.

"We figured that the preheater and the device for handling the back trap were perfected to such an extent that we were ready to put into commercial operation on a large size scale the process of Experiment No. 8 and for this purpose Battery No. 14 was selected."

Mr. Thiess: I now want to read into the record from page 5 of The Texas Company's statement as follows:

"The idea of this arrangement was turned over to a draftsman named Smith in the fall of 1916 and it was conceived by me sometime between the time it was turned over to Smith and the noting of the ac-

cumulation of kerosene fractions on Run 12 of the Redwood apparatus. To the best of my present recollection the date of the conception of this idea was about the first of August, 1916."

I now refer you to page 91 of the affidavit prepared by Mr. Behimer for the Universal Oil Products Company with the assistance of Mr. Dubbs, "Operated August, 1926."

Mr. Hall: Just put in a paragraph after that state-
1259 ment "assisted by Mr. Dubbs," put in parenthesis "Mr. Thiess' statement not agreed to."

Mr. Thiess: "Operated August, 1926, Experiment No. 8, reconstructed. Drawing shown on page 92.

545 "The above apparatus was operated under my supervision by men, some of whom had been on the original experiment and all subsequent experiments and commercial operations of the commercial cracking units up to the time they were taken off in August, 1926, to operate this reconstructed No. 8, and by this acquired knowledge were able to operate this No. 8, and after its best operation, I would not be in favor of using a jet on any cracking equipment."

Now we also want to put in evidence photostatic copies of the drawing on page 92 of the reconstructed No. 8, and the drawing on page 43-B of the original No. 8, as DX 239 and 240, respectively.

1260 We also wish to introduce in evidence copy of the supplementary index to the affidavit following the general index in the affidavit.

First Jet Experiment—May to August, 1937. The first attempt to return reflux to coil with the raw oil was in the Coil and Drum apparatus, Experiment No. 8, found on pages 34 to 43 A inclusive.

Second Jet Experiment—February, 1919. The second attempt to use the jet was on Experiment 18 Battery 3 (last run found on pages 64 and 65, drawing shown on page 70). This experiment was made in about February, 1919. Behimer reported it only took from 1 to 1½ bbls., or reflux back to the tubes, and that the operation was unsatisfactory.

546 Third Jet Experiment—1920-1922. The third
1261 attempt to return the reflux to the heating tubes was made on the 11-B reconstructed apparatus and

operated from the early part of 1920 to about Xmas of 1922. About four or five runs were made on this plant with the jet, and were not satisfactory. Other devices were experimented with. See pages 71 to 75 for details and drawings will be found on pages 76, 76A, and 76B.

First Surge Pump—Summer, 1921. Hooked up on commercial plant Battery 14. Runs made in summer of 1921. See page 82, drawing on page 83. See page 87 for "Change of Point of Entrance of Reflux to Heating Coils." No drawing made of this feature. Surge pump also used on commercial Battery #18 in 1923.

First Commercial Operations With Jet—Fall of 1925. Made on commercial plant Battery #14 in-
1262 stalled in fall of 1925, pages 88 to 90 inclusive, drawing on page 90A. Jet pump put on battery #13 and later on battery 48 of the commercial batteries.

Experiment No. 8 Reconstructed—August, 1926. Page 91, drawing page 92.

Mr. Hall: Let us put in also on page 95 "I have carefully read over and initialed the foregoing statements, and these statements and drawings are based on my own personal knowledge without having access to any records or any other written data, and are true and correct to the best of my recollection and belief; that I am executing this statement as my free and voluntary act and deed."

1164 547 MAURICE S. BEYT, 1041 South Gunderson, Oak Park, Illinois:

Direct Examination by Mr. Thiess.

I am testifying here in obedience to a subpoena. I am employed at Universal Oil Products Company.
1165 I have been in their employ ten years the first day of October of 1937. Prior to the time that I entered the employ of the Universal Oil Products Company, I was employed by The Texas Oil Company at Port Arthur, Texas. I entered the employment of The Texas Company on July the 7th, 1917. From that time until October the 6th of the same year, I was

sent around the plant to learn the various things that was taking place, that was like coke stills, lubricating stills, the agitators, pump house and one thing and another. In other words, getting training. And on October 6, 1917, I was transferred over to Mr. Behimer's department. I worked for a short time on the stills, which would be called 11-B, experiment 11-B. Those were very small at the beginning of the cracking game, the best I can remember the
1166 stills were about 12 inches in diameter by 12 feet long. And from there on, of course, we changed from one type of experimental units on cracking until first of all about, I imagine, about two months after I worked on these stills Mr. Behimer was quite busy, frequently called to New York on business, and I noticed from time to time, practically every hour during the day, he would come down and do some figuring while we were running the stills. So I got kind of curious what he was doing there. So I looked over the running sheet that he was making, the yield state-
548 ment. In those days we had no way of telling the oil level, the only way we could figure how much oil there was in the still was by figuring what we took out and what we put in. So when he went—he was called, I think, to New York, shortly after I started with him, I noticed how he figured those things, so I kept the record up for him while he was gone besides doing my shift work. After he came back he asked me if I had done this work and I told him yes. He asked me if I thought I could do it, and I said "I think there should not be any reason why I could not because I went to college and got a college
1167 degree and those things are just minor details. From that time on I worked for Mr. Behimer. I really became assistant shortly after I started with him. I was acqnainted with every bit of his work and had charge of his files. I am acquainted with Mr. Otto Wannack.

The first part of January 1926, a man by the name of Harry Brunow, he was a mechanic for The Texas Company who I had known for quite a long time, approached me right outside The Texas Company gate one noon hour, and told me he wanted me to meet an oil man, that he thought he had a good proposi-

tion. I told him I did not care very much about meeting any oil men as long as I was satisfied with my present job. But he was not satisfied. He kept on from day to day until finally I agreed to meet
1168 the gentleman. I think it was on January 21, 1926, Brunow passed my house and told me to come with him over to see this friend. So I went with Brunow. This man he wanted me to see was stopping with an old Texas Company employee by the name of Charlie Witherup, who was in Port Arthur. We got there about 8:30 at night. I was introduced by Mr. Witherup, whom I had known for a long time with The Texas Company, to Mr. Wannack. Mr. Witherup was the first man to speak. He told Mr. Wannack
549 that he had known me for a long time; I was a good boy; dependable and valuable. And he said, "I want you to meet this gentleman. If he has anything to offer, I want to tell you that I have known this company he works for for a long time. I have sold them packing. They are very nice people. Don't be afraid should he offer you something you would like to accept." And Mr. Witherup also stated that he had worked for The Texas Company, I believe 21 or 22 years as a mechanic, and that he wished he had quit them long before he did because he has been doing a whole lot better after he left them than when he was with them. That was about all that Mr. Witherup said. And Wannack told me that there
1169 was an interference between, I think he used the words C. P. Dubbs and The Texas Company and he felt positive that The Texas Company was infringing on Dubbs, and he would like to get some proof, some kind of information to prove whether The Texas Company was in the right or Dubbs was in the right. And he said most probably I was in a position to help him.

So I think, to the best of my recollection he suggested that I get some of the old running sheets, which I think was this old experiment 8, together with Brunow, and then he would have photostatic copies made of these sheets, and that Brunow would return them to me and I would put them back into the file and then he would pay us for this information.

Well then, there was a few other things said, which

I don't remember exactly, but I don't suppose I impressed him very much about that. So he said that he was working for a very nice company, that he would like for me to consider employment with
1170 them. I think he said the Universal Oil Products Company. And he also suggested, would I mind meeting Mr. Dubbs should Mr. Dubbs—no, come up to Chicago and meet the officials, and I think he mentioned Mr. Dubbs, and see what kind of a laboratory and stuff they had here, so I could decide whether I wanted to leave or come over here. I told
550 him that it was impossible for me to leave because I was working for The Texas Company. So he suggested that maybe he could make arrangement to meet Mr. Dubbs down South a short time after that. If I would furnish, if Brunow and I would furnish him evidence of the report or work that had been done on this jet pump, Mr. Wannack said—make the price what I thought this work was worth and he would be willing to pay for it; that
1171 he would deposit the money in some box—of course he mentioned the National—a bank box I mean, but I knew that was impossible because I would go to work before the bank would open and I would come back home after the bank was closed, so I knew that would not work. But I gave that very little thought. But he did say he would give me some money, he would recompense me. I think he further stated at that meeting that if he could get his proof that this work was done or not done, it might save quite a bit of expenses if he had to go to battle in court.

The next meeting I had was with Mr. Brunow, Mr. Dubbs and Wannack in Beaumont, Texas, on
1172 January 29th, 1926. The first thing said was, Mr. Dubbs renewed his offer that Wannack had made me about a job, offer of employment with his company. He did not say what sort of compensation he would give me. And the next thing I think he said was to "make up your mind, don't be like one of the other Texas Company men, Mr. Powell"—whom I knew well, I have forgotten his initials right now. Mr. Powell was assistant engineer with the Texas Company at that time. Mr. Dubbs said that Mr. Powell had accepted a job to work with this com-

pany, Universal Oil Products Company, and after signing a contract he had spoken to Mr. R. C. Holmes, President of The Texas Company, and through the influence of Mr. Holmes, Powell had asked to be released from his contract and never did appear on the work. And he would like for me to make a decision one way or the other, and not do like Powell, don't give him the trouble that Powell had given him.

1173 551 Then Mr. Dubbs said he had heard about some of my experiences. He asked me what college I attended to, what subjects I had taken. He asked me if I was familiar with the operation of a jet pump. I told him yes, and I drew him a sketch to show him how it would operate. At that time I told him it would operate. Nothing was said about an affidavit at this meeting by anybody that I can remember. At this meeting I think Mr. Dubbs showed me one letter from Schutte & Koetting. They are supposed to be manufacturers of jet pumps. I don't remember any conversa-
1174 tion about that. I don't remember that he did not show me anything else outside of that letter. Brunow may have said something at this meeting, but I don't remember right now. As far as Wannack is concerned, he came in the room, but whether he sat the whole time we were there or not, I don't remember. Mr. Dubbs asked me if I recollected when experiment 18 was run, and I didn't know. I told him I did not remember the year. I think that is what I told him. I don't remember whether Mr. Behrimer's name was
1175 mentioned at that meeting. Mr. Dubbs asked me whether that experiment 18 was run. I think I told him I did not know, to the best of my recollection.
1176 I have never seen Mr. Dubbs after that meeting until in Chicago, that was the only time. I know Mr. Dubbs very well.

I next met Mr. Wannack about ten days or two weeks after this meeting that I had with Mr. Dubbs and Mr. Wannack and Mr. Brunow. Of course he called me up practically every day and I kept on putting him off for some reason or other, I did not know anything, I did not want him to bother me, and after about ten days on appointment he came over to the house, and my wife and children were there and he was very

nice, and, of course, it was pretty hard for me to be indecent to him, and he talked in general. Then
552 he brought up the subject about employment again. And he asked me to accept a position with the Universal Oil Products Company. He made me a definite offer at that time. I think he told me that
1177 he would pay me six hundred dollars a month. I was getting between 250 and 275 from The Texas Company at the time. Wannack kept on offering me to pay me, make me accept this position, and I told him no. Then he changed the subject. He started talking to us in general and he asked my wife how she liked Port Arthur. My wife said "Well, not so hot." And he said "Well, where would you like to live?" She said "Only two places I would like to live. One is California and one back in Louisiana." "Well," he says, "would you mind taking a trip at my expense to California to see your sister and see if you like it? If you like it over there and your husband decides to make a change, I will see that he gets a job in California." So my wife says "No, we will consider it."

So a little while after Mr. Brunow came in, and as soon as Mr. Brunow came in Wannack pulled out some money he had in his pocket, and he had two
1178 $100.00 bills, the best I can remember, and he gave one to Brunow, and he turned one over to me, and I turned it back. He said "If you don't want it, give it to your wife and children." I said "No." But he kept on insisting. Brunow took the money and he kept on insisting, he says, "Now Beyt," he says, "I have taken some of your time, you are a good friend of mine" he says, "I would consider it a favor if you would accept that money." So well I said, I said to myself, I intended when I took it, I intended to give it back but I wanted to keep kind of in touch with him to see what he was after, because I was responsible for the files for this information, and he wanted it, the keys to the files was in my possession. So I took the
553 $100.00 and kept it for about, oh, four or five months. I saw him only once after that and he did not speak about it, and I thought maybe after he found out I did not want to have any dealings with him he would call for the money and I would give it back to him. I could not tell you the amount of money
1179 Wannack had at the time for this reason, he may have

had two hundred dollar bills, he may have had five, he may have had a hundred, and he may have had only two. He could have had one dollar bills or twenty dollar bills or one hundred dollar bills on there, but he had I would say a medium size, good size roll of greenbacks, but what denomination they were, I do not know because he only took the two top ones. In my affidavit to the Texas Company I said he had a roll of $100.00 bills never realizing that he—what kind of denominations he had, if they were all one's, I could not tell. There may have been a thousand of them, I could not tell. I used that word "hundred" because the first two were hundred dollar bills.

Q. Well, in this affidavit you did state that "he pulled out a large roll of hundred dollar bills and offered to start paying my salary on the new job
1180 right then in advance, two weeks pay, which according to my recollection was to be $300.00 for 15 days." You said that?

Mr. Reichmann: Well, just a minute, he is impeaching their own witness.

Mr. Thiess: I am not trying to impeach him.

Mr. Hall: I know, but he doesn't lay the proper foundation for refreshing his recollection, if that is what he is trying to do. Either way I submit it is improper.

The Court: I think the witness has told his recollection now of the occurrence, what he thought about it at the time he made the affidavit.

554 Subsequent to the meeting with Wannack, when this hundred dollar bill was given to me, Wannack kept on calling me again. Finally I made up my mind I was going to meet him for the last time and I told him yes I would meet him.

1181 I met Mr. Wannack and we rode a short distance in his car, right close to my house, and he never spoke about records or information. He asked me would I sign an affidavit. That was the first time this proposition of an affidavit had come up. He did not even show it to me. Wannack told me that at any time that I wanted to leave The Texas Company he would be very glad to offer me work, and to remember that he was my friend if I would get into trouble with money or expenses to let him know and he would be willing to help me.

1182 I received some letters from Mr. Wannack.

Mr. Thiess: Those letters are already in evidence.

I remember a portable Corona typewriter. It was not delivered to my home, it was delivered to the first door neighbor, I think the family and myself were out, and delivered the next morning to my house. I think one of those letters, I don't remember the contents, but one of those letters explained that he—at least I understood him to say he did not sign those letters, I don't believe.

He explained to write letters on the typewriter when I would write to him, and that he had some
1183 standard envelopes which I think was marked Post Office Box 303 Beaumont.

There must have been stationery and letterheads; all of that came through the mail. I did not use any, for that reason I do not remember, but I remember the Post Office box.

After this last meeting with Wannack I don't remember contacting anybody else representing the Universal Oil Products Company prior to the time that I resigned from The Texas Company.

555 I met, I was in contact with Wannack four different times; that was in Port Arthur with Mr. Witherup; one time in Beaumont with Mr. Dubbs; at my house without appointment when he gave me the $100.00 bill; and when I told him good bye, not signing the affidavit.

1184 It is pretty hard to say who was in the employ of the Universal Oil at that time. I met Mr. Murray while on my vacation and he told me that during my vacation Mr. Dubbs would like for me to come up to Chicago, he wanted to see me.

I went to Chicago and met Mr. Dubbs. I got here and rang up Mr. Dubbs, I think it was at the Uni-
1185 versal Oil's office, or at his house, I don't remember correctly, and one of the first words he said, he said "Is that you, Beyt?" I said "Yes." He says, "I would like for you to come to dinner with us to-night," me and my wife and my aunt, I think it was, and Mr. Behimer and Mrs. Behimer and I think Miss Egeler, and Mr. Kerr was in the party. Well, before accepting that invitation I asked him if he knew where Mr. Behimer was and he says "Yes, Behimer is going to work for the Universal Oil." I said "Could I talk

to him?" He says, "Sure." So Mr. Behimer got on the 'phone and he said "Hello, Maurice." I said "Hello, Mr. Behimer," and that is all we said. Then I accepted the invitation and went to supper and went to the theatre that night with Mr. Behimer and his wife and Mr. Dubbs. During that afternoon late, the crowd that was in the party went back with the exception of Mr. Dubbs and myself, and Mr. Dubbs said "Beyt" he said, "I would like you to come over to work for us in the same capacity that you were working at Port Arthur, as assistant to Mr. Behimer. He
1186 will be in our research department, and I want you to keep on working with him. You always got together well and I would like to see you accept it." So he offered me, he asked me first how much I was
556 getting. I think I told him $275.00. "Well" he says, "It will cost you $75.00 at least more for a house here, you have your own house over there, so that will make it pretty close to 325 to $350.00, something like that." So he says "I will give you a contract if you want for $350.00 for ten years as assistant to Mr. Behimer." I says, "Well, I will think it over." So the following day, the following morning a fell ow by the name of Olsen, I think it was, came over to the room, and he introduced himself and said he had some good news for me. I said "What is it?" So he says "Mr. Dubbs decided to make your salary $400.00 a month" and I think ten per cent bonus had been included when he offered that $350.00, so he made the proposition of $400.00 a month and ten per cent bonus, and a contract of ten years. So I told him, "Well, I think that would be satisfactory," but before accepting or signing a contract I wanted it
1187 understood that I was going to go and see my brother back in Louisiana and talk the proposition over and show him the contract and be allowed to show this contract to two lawyers of my own choice before signing it. So he wrote the contract and shortly, I think a day or two after, I left for Louisiana and went to my brother's home where my family was on vacation, and showed it to my brother and he called two lawyers in and we read the contract over, and there was one word changed in that contract after we read it. I don't have the contract. I made no affidavit or statement of any kind whatsoever for the Universal Oil Produets

1188 Company regarding Behimer's work at any time while I was working for the Universal.

Q. Did you bring any records of Behimer's experimental work from The Texas Company to the Universal when you went there?

1189 A. Well, minor details, yes, some of the reports I did.

Q. I wish you would have with you the papers that you brought with you from The Texas Company when you went to work for the Universal, when you come in on Tuesday.

557 Mr. Thiess: Just a minute, we want to ask you whether you will let us have this affidavit on Monday.

Mr. Haight: No.

Mr. Von Holst: We are asking Plaintiff's counsel, your Honor, for leave to see this affidavit again on Monday so that we can determine whether we have to offer any further parts of it in accordance with your Honor's ruling.

Mr. Haight: We think we have done all that we should do, if your Honor please. They had it from half past four last night until eight o'clock. That affidavit is full of many other things and we do not think they should be entitled to any further study. If your Honor feels differently, we will make that same arrangement with them for Monday that we did

1190 yesterday.

Mr. Thiess: Your Honor wants to remember that this is quite a voluminous document. We went over it in a hurry after we got through last night, 52 drawings and a lot of written matter, and in view of the fact. we feel after reading over that document, we were rather surprised when we compared it with the statements that we had, and we should have an opportunity of going over it again for the purpose of introducing any statements such as you suggested that might be in the affidavit, in view of the fact that you did not want the entire 95 page affidavit to go in.

The Court: I think that you may have the same opportunity to examine it Monday that was afforded you yesterday.

Mr. Von Holst: That does not mean we are limited to the same amount of time, I hope. We will be as

reasonably expeditious as we can but we would like to have a reasonable opportunity to make some study on Monday.

1191 The Court: Let me ask, is counsel limiting the time now for Monday that they had, that counsel for defendant had on yesterday?

Mr. Haight: How many hours did you have last night?

Mr. Von Holst: We had it about three hours.

1192 The Court: A ll right. I do not feel like ordering the document to be turned over that may contain a good many matters that have a bearing on future litigation.

558 Mr. Von Holst: They don't your Honor.

The Court: But counsel that have it say that it does. I cannot examine it, and on their representation that it does contain matters affecting the other law suits, the other cases, I think that three hours is probably enough, having had it three hours, a 95 page document, six hours is a sufficient length of time.

Mr. Von Holst: We will do our best.

Mr. Haight: Three hours?

The Court: Three hours.

1193 559 I stated that I met Mr. Murray prior to the
1194 time that I came to Chicago to meet Mr. Dubbs; I was leaving Port Arthur to go on my vacation to Louisiana and on my way down, I imagine about four or five miles after I left my home, Mr. Murray crossed me in his automobile and waved to me to stop, which I did, and he came up to the car where me and my family was and told me that Mr. Dubbs wanted me to come up to Chicago during my vacation. He was the third Universal representative that I met.

1195 I produce the contract of employment (DX 237) which I entered into with the Universal Oil Products Company.

Q. Now when we adjourned Friday you said you would look up to find the papers that you took with you when you entered the employ of the Universal; have you got those papers with you?

A. Yes, sir.

Q. Will you produce them, please?

Mr. Thiess: The witness produces the papers.

560 *Cross-Examination by Mr. Reichmann.*

I have produced a package that I had in my personal possession containing documents and papers that I testified to just prior to Friday's adjournment. They are copies of papers prepared by Behimer or myself and pertain to the work carried on in the plant of The Texas Company while I was employed there.
1197 Some of these files date back to the first experiments in 1915 and some extend up to 1927. About 99% of these files pertain to data which has nothing to do with the Behimer clean circulation process. I gathered these files right along during that period of time. After the first year or two we were so busy we did not have time to make any summaries. In
1198 fact, when I first went to work for Behimer, he was way behind in his work, and for a long time we did not find an opportunity to summarize the work that was being done. The Legal Department or the Engineering Department would call on us to furnish them data and since it required a great deal of time for us to go back through the files, I started to make summaries, but since oftentimes Behimer was out and I had to take care of all the experimental work, I
1199 started taking some of these reports to my home to work on at night. For this reason I made copies of some of these files, took them home, and kept them there, and those are the ones I have in my possession. These are not all the files that I worked on and do not contain complete data as to tests, products, pressures or temperatures.
1199 None of the documents were taken from the files of
1200 The Texas Company in anticipation of my ever going to work for Universal. Prior to and up to the time I was employed by Universal, I did not tell Dubbs
561 or anyone connected with Universal that I had this private file in my home.

I was employed by Universal October 1, 1927. I signed the contract in St. Martinsville, La. and de-
1201 livered it in person to Dubbs in Chicago about October 2.

At that time those files were in my home at Port
1202 Arthur, Texas. Subsequently, about October 20, I went back to Port Arthur and moved my furniture and belongings to Chicago. I also brought those files along with me and kept them for a short while, but as

I had no good place to keep them, Miss Egeler consented to put them in the safe where they have been right along. I have always had access to them.

Sometime in November, after I had moved to Chi-
1203 cago, was the first time I told Dubbs that I had these papers. No doubt it was a short time after I moved to Chicago, because I wanted a place for them and told him I was going to put them in the safe.

Since I left the Texas Company's plant on September 16 to go on my vacation, I have never had
1204 access to their files and never visited the plant until this summer when I had a short visit with a friend who is chief chemist for the Texas Company at Port Arthur.

1204 562 Mr. Reichmann: Yes. Now, if your Honor please, I say on that basis counsel are not entitled to an excursion through these papers. They have nothing to do with the issues in this case in any way, shape or form.

The Court: Let me ask you. These are the private papers of Mr. Beyt. Does anybody else object to their use by anybody to whom he delivers them: I don't see that a party to a suit may object to the examination of papers produced by a witness unless he objects to it. They are his private papers. If he desired he can turn them over to anybody either with or without a subpoena if he so desires.

Mr. Reichmann: That may be true, if your Honor please, but nevertheless this witness is now in the employ of the Universal Oil Products Company.

1205 Mr. Thiess: These are his private papers.

The Court: Still they are his private papers. He could have turned them over if he wished to anybody any time during the trial; before the trial started or during the trial he could have turned them over to counsel. The papers were never the papers of the Universal Oil Company.

Mr. Reichmann: That is true.

Mr. Haight: I suppose we will be entitled to object—

The Court: To the introduction of any papers.

Mr. Haight: To their introduction or probably to the examination of them if they are not relevant to this issue.

The Court: I don't think you have a right to object

to the examination of them. You may not have a
1205 563 right to the introduction of them. Of course, I do not propose to have that file of papers examined in court during the progress of the trial.

Mr. Reichmann: Yes.

The Court: But the witness is the only person who can object to the examination of those papers.

Mr. Haight: My thought was simply this. I do not wish to go into it to any extent. Those papers may contain, I don't know whether they do or not, informa-
1206 tion which may be useful to the other side on the main issue in this case and possibly in the suit that The Texas Company has brought against them, but we are not bearing The Texas Company's burden. I do not think that should be permitted—I don't think they should be permitted to make an excursion through these papers in an issue of this particular kind for the purpose of getting information which may be used later. I recognize the force of your Honor's position, that if they went to Tom, Dick and Harry and said, we want to go through those papers, that we wouldn't have any right to say that they cannot go through them but as Mr. Reichmann says this is a little bit different situation.

The Court: All I am ruling now is this. The papers are produced in court; they are not going to be opened for examination during the progress of this case. They still belong to the witness. I cannot sustain any objection now to their examination, it all depends upon Mr. Beyt.

Mr. Reichmann: I appreciate your Honor's thinking of something that I had forgotten.

1222 564 Mr. Haight: I just want to make one suggestion, if your Honor please, on these records in justice to Mr. Beyt. He has produced them, and I presume very largely on the idea that the records were ordered to be produced, or in a way tantamount to a subpoena, because he was asked on the stand if he would produce them and he said yes, and we told him to produce them. Now, whether he should give his consent to the examination by the other side of these records or not may present a question upon which he would like some independent advice, and I think that in fairness to the witness before Mr. Thiess examines the records—he has taken them over to his

desk—that Mr. Beyt should be given an opportunity
1223 to consult with someone other than somebody on our side as to whether or not he wants them to have the papers to go through.

The Court: Well, I don't understand the papers are delivered to anybody. They are still in the possession of the witness. He produced them here in court, but that's all.

Mr. Thiess: He handed them to us.

Mr. Reichmann: They have got them.

The Court: He produced them in court in response to a request, but I don't understand, unless he wants to deliver them to you he does not have to.

Mr. Thiess: Q. Mr. Beyt, did you deliver those papers to me?

Mr. Hall: Your Honor, it seems to me, before he answers that question, that's the very thing Judge Haight is talking about.

1223 565 The Court: It all depends upon—do you want to consult with counsel before you decide?

The Witness: I would like to.

Mr. Haight: Don't consult with any of us.

The Witness: How is that?

Mr. Haight: Don't consult with any of us.

Mr. Neuman: I suggest the Court call someone.

The Court: He may consult—Judge Haight has
1224 told him not to consult wtih them, so he may pick out any independent counsel he wishes. It is just as well you do not consult with any of the attorneys representing the Universal. The papers are in the witness' possession.

Mr. Thiess: Let the record show I am returning to the witness the volume containing the papers which he produces this morning.

Mr. Haight: I would say, if your Honor please, so far as we are concerned we would have no objection to the examination of the papers by Mr. Thiess under the same conditions that he examined the—

The Court: The affidavit?

Mr. Haight: The affidavit, and I think Mr. Beyt ought to know that and make that statement to whomsoever he consults.

Mr. Thiess: What are those conditions?

The Court: That the papers be examined under the same conditions as the affidavit was examined.

Mr. Thiess: Are the conditions that are laid down by Judge Haight with respect to those papers
566 these, that we can examine the papers and then put in such papers as we desire, subject to objection?

The Court: Of course, I am telling the witness if he has any papers there individually that he wishes to keep, Judge Haight cannot bind him.

1225 Mr. Haight: Oh, no.

The Court: He may have something in there of a private nature of his own, and Judge Haight cannot bind him by any agreement here, but you may talk it over and the witness may consult his counsel with reference to any agreement he makes.

Mr. Hall: Your Honor, the only point to my mind is this, this man is a layman. Now, he produces these as a witness, he feels he is under the influence of the Court.

The Court: He is not under anybody's influence. He can consult his own counsel and his own counsel can advise him as to his rights in the matter.

Mr. Hall: That's what I said.

The Court: And as I said he should not consult counsel of the Universal, he should consult his own counsel because he may have matters there that he won't want anybody to see, I don't know.

1207 The Witness: At the time that I was collecting these papers, Mr. Behimer did not know I was collecting this information. He did not know I had these personal papers at home. No one knew I had these papers at home. These papers were mostly excess copies of stuff, reports written to The
1208 567 Texas Company which excess copies we had, you understand, but there always was a copy of that same work in Mr. Behimer's files. When there was an extra copy I got it. I knew at the time that I
568 met with Mr. Dubbs and Mr. Brunow and Mr. Wannack that Mr. Dubbs and the Universal were very anxious to get some of these papers. I knew they were trying to get these papers at that time and at the time I entered the employ of the Universal. No, not these very particular papers. They wanted to get papers relating to the Behimer work on the jet pump.

Referring to this contract, Defendant's Exhibit 237,

in paragraph 3 thereof it refers to inventions which I might make while I was in the employ of the Universal. I did not make any inventions while I was in
1209 the employ of the Universal that I filed applications on. I know a man by the name of G. D. White, employed by The Texas Company. I don't remember discussing some of the activities of Mr. Brunow and myself with Mr. White. I remember talking to Mr. White about an affidavit, not about keys though.
1210 One afternoon, that was quite a long time after I met Mr. Wannack for the first time, Mr. White met me at The Texas Company garage and told me he had an affidavit he would like for me to sign. To the best of my recollection he did not produce the affidavit because I spoke pretty rude to him in refusing to sign it, and I think that's the only time that I spoke to Mr. White concerning any activities about the Universal Oil or The Texas Company in regard to this case. I have no recollection of talking to him about the keys at all. After I entered the employ of the Universal Oil Products Company, I did not give Universal any statements or affidavits regarding this work.
1211 After the first meeting with Mr. Wannack at Mr. Witherup's house, the following morning I notified Mr. Behimer whom I was working for. I told him a man, I don't remember if I mentioned the name or not, but a man representing either the Universal Oil or Mr. Dubbs had offered me employment at a substantial increase in salary and I would like for him to investigate and see whether The Texas
569 Company would not be willing to increase my salary from what I was getting at the time. That is all I said.
1212 After the second meeting I had with Mr. Wannack I spoke to either Mr. Martin, Mr. W. K. Holmes or Mr. Tom Dellinger, Mr. Dellinger was, I think, third assistant superintendent and Mr. W. K. Holmes was first assistant superintendent and Mr. Martin was in charge, kind of a utility man in gathering information around the plant and office, and I notified one of those three that I would like for them to take all the files pertaining to the jet pump experiment 8 out of my possession because I was getting afraid that someone may get hold of these runs, and if they

did that I would be the one to blame, it would fall back on me, and the best I remember now they took those files, I showed them the files and asked them to take them, and I think they took them back that same day or the following day, and I don't know whether it went to Mr. Bill Donaldson's office or to Houston or to New York with those runs, that was the end of my knowledge of what happened to those files.

1213 I did not give them the files I had at home. I did not figure they would do them any good, whether they would see those or not. They were not pertaining to the jet pump. There might be a little diagram as to the jet pump itself but as to its activities and yields and tests, I don't believe there would be anything. Of course, it has been a long time since I looked through those files, but I don't believe you could find anything that would help solve any problem regarding the runs.

1214 I executed an affidavit and told The Texas Company about these activities some time in August, 1926.

Q. Was not that the first time that you made a full disclosure to the officials of The Texas Company about what was going on?

A. Yes, outside of just giving the automobile 570 license and the place where Mr. Wannack lived, I think that was the first time.

1216 I recognize a telegram (DX 238) dated October 1st, 1937, that I sent from the Union Station in New Orleans. It is my telegram of resignation, and reads:

1217 "New Orleans, Louisiana,
October 1, 1927

"W. K. Holmes, Texas Company, Port Arthur, Texas.

I am resigning my position with The Texas Company dating from today Stop Have thought it over carefully and my decision is final.

M. S. Beyt"

That is the first intimation that The Texas Company had that I was resigning. I never talked to them about it at all before or after this. After I consented to sign and signed the contract with Universal I sent that telegram of resignation, on my way back from St. Martinville to New Orleans.

1219 Mr. Thiess: That's all so far as Mr. Beyt is concerned, subject to our examination of these papers.

571 *Cross-Examination by Mr. Reichmann.*

Neither Wannack nor anybody else ever asked me to make a false statement as to my knowledge of what Behimer had been doing. Wannack wanted the facts as to whether an experimental run was made with the jet pump and when.

1220 Neither Wannack nor anybody else ever asked me to destroy, secrete or suppress files. All they asked of me was to get the files they wanted so they 572 could have copies made and then the originals would be returned.

1221 I attended a meeting in a hotel at Beaumont at which Dubbs was present but nothing was said there about obtaining any of the files of the Texas Company and no one said anything about my signing an affidavit.

1222 I had nothing to do with getting keys or the numbers of keys for Wannack. I had keys of my own for the files.

573 MAURICE S. BEYT resumed the stand:

Direct Examination by Mr. Thiess.

1521 Q. Mr. Beyt, have you consulted counsel about a 1522 matter that was discussed with you here the other day when you were on the stand regarding your papers?

A. Yes, sir.

Q. And what conclusion have you come to as a result of consulting your counsel?

A. After going through about the same procedure in answering that I gave you in court, going over the history somewhat similar I would say as I gave in court as to how I came to have these reports in my possession, they told me it was my personal property and I was under no obligation whatsoever to let anyone see these reports, if I objected to it.

Q. Did you discuss these papers with any members of the Universal Oil Products organization at the time you turned them over to them?

A. I don't think right at the time I turned them over.

Q. Well, did you ever do it?
A. I may have discussed some with Mr. Dubbs.
Q. Do you know when you did that?
A. No. That would be hard to say.
Q. Didn't you go over these papers respecting the
1523 work that was shown on the experimental work of Behimer with Mr. Dubbs when you turned those papers over to him?
A. No, no.
Q. You never did that?
A. No, not to my recollection.
Q. All you did was to turn them over to Mr. Dubbs?
A. No, sir. I didn't turn them over to Mr. Dubbs. I turned them over to his secretary.
Q. You turned them over to his secretary?
A. Yes.
Q. And they were never opened to the best of your knowledge while they were in the Universal Oil Products?
574 A. Do you mean together with somebody else or by myself?
Q. You or anybody of the Universal?
A. I may have.
Q. Or somebody else?
A. I may have gone through the reports in this way, when I saw patents issued to other companies, regardless of who they were, in regard to the same work that we had covered, I may have gone through them once or twice to check up the date if I happened to have it to see whether The Texas Company really
1524 had done the work previous to the patent that had been issued or in question.
Q. But you never went over it with anybody of the Universal?
A. No, sir, no, sir.
Q. And to the best of your knowledge they never looked at the papers, is that your understanding?
A. To my knowledge, yes, sir.
Q. Did you tell them you did not want them to look at those papers?
The Court: I don't know that it makes any difference.
Mr. Haight: If we did look at them, what differ-

ence does it make? I think we are just wasting time. I object to it.

The Court: All right. The objection to this last question is sustained.

Mr. Thiess: Q. Mr. Beyt, in these papers that were turned over there were papers relating to this experimental work of Mr. Behimer's runs, et cetera, were there not?

A. No, sir.

Mr. Hall: That has all been answered. He has answered there were no run sheets.

1525 A. No, sir.

Mr. Thiess: Q. What sort of papers were these in these papers?

Mr. Reichmann: That has been gone over. We have had nothing in this case from start to finish. They have made some vicious charges and they have not sustained one. They have sought to fish and fish and fish. We have been more than tolerant, if your Honor please.

The Court: Are you objecting to this question?

Mr. Reichmann: I am, certainly.

The Court: The objection will be sustained.

Mr. Beyt was called to the stand, as I under-
575 stand it, merely for the purpose of stating whether he was willing to turn over these papers. He had them in court and produced them and before submitting them he said that he would like to talk with his counsel. Now, he is recalled and has stated that he is not willing to produce them, they are his personal papers and he is not willing to turn them over, and I think that's all there is this morning.

Mr. Von Holst: Your Honor, what privilege does he claim?

The Court: I don't know of any.

1526 Mr. Von Holst: There is no privilege. A man cannot say that these are his private papers and therefore he won't produce them if they are material.

The Court: There is a way of getting at private papers, but I don't think any such procedure has been followed in this case.

Mr. Thiess: He has been subpoenaed to bring these papers.

Mr. Haight: Not these papers. He was not asked to produce them.

The Court: I had not understood there was a subpoena for them. If they were subpoenaed they would have recited the particular papers he was to produce. I understand he was subpoenaed to be here and he was asked to produce papers. He is not a party to the case and could not be required to produce them in that manner. He was asked on the stand what he would do, and he said he wished to consult with counsel. He has consulted with counsel and now says he does not wish to turn them over, and that's all there is as far as I can see.

Mr. Von Holst: He has said that ninety-five per cent of all the papers did not pertain to this work
1527 but five per cent did.

The Court: The only question is—there is no subpoena for these papers.

Mr. Haight: No.

Mr. Neuman: Your Honor has the right to order the witness to turn these papers over. He has admitted five per cent are material to this case.

The Witness: Five per cent or one per cent.

Mr. Neuman: I understood him to say ninety-five did not.

Mr. Von Holst: If there was only one paper—

Mr. Reichmann: You are not entitled to it.

The Court: You should have subpoenaed these papers.

Mr. Von Holst: How could we subpoena these papers before the case when we did not know anything about what this man's testimony was going to be or even whether he had them.

576 The Court: There is a way of getting at these papers.

Mr. Von Holst: In order to draft a subpoena we have to know what you have.

The Court: Of course you do.

Mr. Reichmann: You have not laid the foundation.

1528 The Court: There is no foundation. You are charged with fishing. I don't think that's a very serious charge. I think all lawyers fish when they have an opportunity, but you cannot get the papers as you have attempted to get them here. That's all I am ruling on now.

Mr. Von Holst: If we draft a petition and present it to your Honor this noon—

The Court: Whenever that is done I will rule on it.

Mr. Von Holst: All right.

Mr. Haight: I don't want to interrupt what you said, but I think this is a pretty good statement of the law. This is by Judge Grubb. This is commonly known in the language of the books as fishing, which is never permitted in law or in equity.

Mr. Thiess: Especially as the evidence is all in the other party's hands.

Mr. Von Holst: We are trying to get the facts before you.

Mr. Haight: That is what we are all doing.

Mr. Thiess: All right.

1605 577 Mr. Neuman: We have prepared a petition for a subpoena duces tecum. Mr. Thiess has signed it and sworn to it and we are now presenting it at this time. I handed Mr. Beyt a copy of this petition about ten minutes ago. We are asking that a subpoena issue and that he be required to produce them forthwith.

Mr. Haight: We would prefer, if your Honor
1606 please, that this petition should be answered by the gentleman whom Mr. Beyt consulted; if that is not feasible, why, we propose to oppose it as we would oppose the introduction of the papers in evidence. But we would prefer very much that the gentlemen who represent Mr. Beyt should.

The Court: Well, can he be here this afternoon?

Mr. Hall: I believe Judge Haight, if your Honor could hear him, or Mr. Reichmann, on the matter, could make the proper objection.

Mr. Neuman: They have known since this morning; we were sincere when we asked for these things this morning and have prepared the petition.

Mr. Reichmann: We will present it to your Honor as far as we may, if necessary. I think Mr. Beyt should have the privilege of calling his own counsel later.

The Court: All right, I will hear you.

Mr. Neuman: Are they speaking on behalf of Mr. Beyt now?

1607 The Court: They are speaking for their own client.

Mr. Haight: We think the petition is insufficient, if your Honor please. It says that the "books,

papers, run sheets, records, etc. in conjunction with the testimony of other witnesses heretofore examined in open court will show, or tend to show that while said Dubbs patent was pending in Interference No. 49.355 in the United States Patent Office with an application of one Otto Behimer and while the Dubbs claims now being asserted in the case at bar against this defendant were in interference and subject to being held invalid because of priority by said Otto Behimer, the plaintiff hired away from the employ of The Texas Company, assignee of the Behimer application, one Maurice S. Beyt and paid him large sums of money."

Now let us stop there a moment. The papers as testified to do not show anything of the sort, that we hired away Beyt, but at any rate the testimony is in the case as to exactly what was done with Beyt so the papers will add nothing to that because
578 the witness has testified that the papers are copies of his compilations that he made while
1608 in the employ of The Texas Company for his own personal use in connection with work that he had to do from time to time for The Texas Company.

"That said Maurice S. Beyt when hired by plaintiff had in his possession books, papers, run sheets, records, et cetera, bearing upon the prior invention by Behimer and that said Maurice S. Beyt was hired away from The Texas Company in order to suppress the evidence relating to Behimer's prior invention."

Now the papers won't show that. We have got the testimony on that.

"Thereafter, the claims of the Dubbs patent now in suit remained unchallenged and uncontested in so far as priority by Behimer was concerned, all of which, in the opinion of the petitioner, materially and directly bears upon the standing of the plaintiff, Universal Oil Products Company, in this court and its right to seek any equity based upon the said Dubbs patent.

"Said books, papers, run sheets, records, et cetera, are as he is informed and verily believes now in the possession of Maurice S. Beyt. Petitioner does not have copies of these books, papers, run sheets, records and so forth."

Now, the Supreme Court said in *Hale* v. *Henkle,*
1609 which is, I think, a pretty well known case—We are also of opinion that an order for the production of books and papers may constitute an unreasonable search and seizure within the 4th Amendment. While a search ordinarily implies a quest by an officer of the law, and a seizure contemplates a forcible dispossession of the owner, still, as was held in the Boyd Case, the substance of the offense is the compulsory production of private papers, whether under a search warrant or a subpoena duces tecum, against which the person, be he individual or corporation, is entitled to protection. Applying the test of reasonableness to the present case, we think the subpoena duces tecum is far too sweeping in its terms to be regarded as reasonable."

Now they want all the papers that Mr. Beyt had and he says that 95 per cent of them do not relate in any way to Mr. Behimer's work.

Now there is a case, that I referred to this morning, I do not think I am going to refer to it, but I thing your Honor is familiar with the rule, probably more so than I am. It is a decision by Judge Grubb
1610 in *Mobile Gas Company* v. *Patterson,* 288 Fed. 884 and 5, in which he said:

"The rule is well established that every motion for the production of documents as a predicate for action by the court must describe the documents
579 which it seeks to have produced, and must show that they contain evidence which is material to the movants' case, and must be accompanied by proof to this effect."

Citing *Carpenter* v. *Winn,* 221 U. S. 553.

It is never permissible to order one party to a suit to produce all of its books and papers for such examination by the other party. This is commonly known in the language of the books as 'fishing,' which is never permitted either in law or in equity. The defendants in this cause seek to escape the necessity of describing the books and documents which they desire to examine and of other proof of their contents by referring to them as such as may contain the material evidence in the cause, so as to pass the burden upon the plaintiff of determining at their peril what ought to be produced and what withheld.

"The conclusion of the court, therefore, is that
1611 the motions in this cause cannot be granted, but bust be denied, because they do not specifically describe the documents, the production of which they seek to require, and neither allege nor support by proof that they contain evidence material to the defense, and further because that which they seek is nothing more nor less than a 'fishing' expedition through the records of the plaintiff in a manner which would constitute unreasonable search prohibited by the constitutional provisions referred to, which could only be designed for the purpose of violating their own contractual obligation and in repudiation of that in consideration," and so forth.

Now we think this comes within those rules, that there is no proof here except mere conclusions that these documents that they seek to get have any bearing on the issue that is now before your Honor.

Now we got Mr. Beyt after Mr. Behimer was employed. That is the evidence in the case. The evidence is that we did not know of the existence of the papers; the evidence is that the papers were not shown to us until long after Mr. Beyt was employed.

Now how can the fact that Mr. Beyt has some
1612 papers in his possession make those papers relevant when we did not hire him for the purpose of getting copies of the papers and did not know that the papers in fact existed. It seems to me that it is not within the issue. May I add just one word more. There were two amendments made to defendant's answer as to this unclean hands. The first amendment related entirely to the employment of Otto Behimer, then there was a second one which I will read as follows:

580 "That on information and belief, to-wit, in 1925, 1926 and 1927 plaintiff, through its agents did wrongfully conspire with certain employees of The Texas Company to purloin private and confidential documents and records of said The Texas Company pertaining to the said question of prior invention by Behimer over Dubbs, and in furtherance of said conspiracy and in consideration of large sums of money paid and offered to be paid, by said agents

of the plaintiff to said employees of The Texas Company, said employees of The Texas Company did purloin and did attempt to purloin said records of
1613 The Texas Company and did deliver them, or certain of them, to said agents of the plaintiff."

There is a further ground that we make of objection and it is that these documents are not within the issue as framed.

Mr. Reichmann: I would just like to have a word so counsel may have our full presentation.

Your Honor is familiar with the Act providing the manner of getting a subpoena duces tecum, the showing that is required by the petitioner, and so forth, then it goes on and says;

"And to bring with him and produce to such commissioner any papers or writing or written instrument or book or other document, supposed to be in the possession or power of such witness, and to be described in the subpoena, such judge, on being satisfied by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book or other document is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of said court to issue such subpoena accordingly."

1614 Your Honor has got to be satisfied that this evidence that they are asking for is material to the issue in the cause. Now what is the issue? Unclean hands. There is not the remotest suggestion in the world that the fact that Mr. Beyt has possession of these papers will throw any light on this unclean hands issue because the evidence in this cause is that, in the first place, Mr. Dearborn testified that they have the complete records. These are supposed to be copies of their complete records, and how in the world can the fact that Mr. Beyt has in his possession copies of those records be treated as a
581 suppression of any evidence in any way, shape or form?

They are copies after all, and furthermore, how can they tend to show anything in the way of unclean hands, because it must be presumed that the

records of The Texas Company being complete show the truth and there is no element of suppression about them of the truth in any way, shape or form because the original records of The Texas Company must speak for themselves.

Mr. Neuman: The practice, your Honor, has always been, as I understand it, that someone not a party where you are applying for a subpoena,
1615 especially a subpoena duces tecum, has a right to have his application granted ex parte, and the arguments which are now being advanced usually come up on a motion to quash, or when the particular document is offered in evidence, then the question of its materiality comes up.

Now, first, answering Judge Haight's statement regarding the fishing expedition. The Supreme Court has said, I believe in the case of *Brown* v. *United States*, that where the party does not know the specific documents and is unable to identify them any better than we have identified them here, and so states in his petition that he has not seen them and is unable to give a better description, that a description which will enable the parties reading the subpoena to pick out the papers and bring them in, that that is sufficient.

The next thing which they raise is the allegation of our petition, and I believe the allegations are in conformity with the proof. The proof is that Behimer was hired away, and the proof also is that they paid him large sums of money, they doubled his salary.

The third thing that the proofs show is that Mr.
1616 Beyt has these papers in his possession and the only question which is left in the case is the question of the materiality and we cannot determine their materiality until the papers are produced and offered in evidence.

The Court: I do not think you are entitled to this subpoena. Of course, it may be that Mr. Beyt would be the one to contest the issue of it, but I might just as well decide this question. I would have to decide when Mr. Beyt came, that is, whether I would require him to produce these documents.

You have charged that the plaintiff had hired Mr. Beyt, that is already proven, we do not need any

additional evidence on that. Also, what he was
582 paid. You do not charge in here anywhere that he has any papers that belong to the Texas Company and which were taken by him from The Texas Company and therefore would be suppressed. What you are asking for is his private papers that he made at his home or kept at his home, simply copies of papers that are on file now with The Texas Company, and I do not see how they in any way tend to prove the issue here of suppression or attempted suppression of evidence in the interference matter.

1617 Mr. Neuman: It goes to the question, if your Honor please, of this coloring of the fact.

The Court: I do not see that it goes to the coloring of the fact or the suppression of evidence or the attempt to suppress evidence, or any attempt to prevent The Texas Company from presenting all the evidence that it might have had. You do not claim anything was taken from The Texas Company, there is not the slightest evidence in this case that any document which was evidence was taken away from The Texas Company or is now in the possession of Mr. Beyt.

Mr. Neuman: The witness admitted that he has papers.

The Court: Oh, he had some papers.

Mr. Neuman: Which referred to Experiments 8, 18, and 11-B.

The Court: Yes, as far as the evidence shows The Texas Company has all those papers and he would have mere copies. I do not think you are entitled to it.

PLAINTIFF'S CASE.

584 HIRAM J. HALLE:

Direct Examination by Mr. Haight.

1242 I am and have been President of the Universal Oil Products Company for about 20 years. Prior to that I was Vice President for about a year.

1243 My connection with the company goes back to the year 1914. In its early stages J. Ogden Armour was the financial backer of the company. Armour and R. J. Dunham called me in to take charge of another company in which they were interested and that led to my connection with Universal Oil Products Company.

I first met C. P. Dubbs in January, 1915. He was employed at that time by Standard Asphalt & Rubber Company as an engineer and technician. This is the company that Armour called me in to manage.

1244 Dubbs later acquired an interest in Universal Oil Products Company.

In 1919 there was a plant at Independence, Kansas where Dubbs' clean circulation process for cracking oil to make gasoline was carried out. The plant

1245 had a daily capacity of 70 to 80 barrels. It was and could be operated commercially.

I recall very clearly a run made at this plant in

1245-1248 the summer of 1919 for a number of refiners.

1245 Mr. Von Holst: We object, your Honor, to this. It can't have any possible bearing on this issue.

Mr. Haight: Now in order to stop the objections let me tell you what the purpose is: We want to show and will show through Mr. Halle, and later possibly further through Mr. Dubbs, that in the

585 summer of 1919 a run was conducted at this plant at which representatives of a great many refiners were present, so that the results of this run were known generally throughout the refining industry, and in that way must have come to the attention of The Texas Company. This is all preliminary to showing why we thought it incredible that The Texas Com-

pany through Mr. Behimer could have had this clean circulation process as early as they claimed they did, when as late as 1921 they erected these stills at the cost of something like five million dollars which didn't employ the clean circulation process. It is the foundation for the—one of the reasons which, as your Honor will recall, in Mr. Reichmann's opening, we stated led us to make this investigation down in Texas.

The Court: Yes, solely for the purpose—for that purpose.

1247 Mr. Thiess: Because if it is anything else, on cross-examination I certainly want to go into it.

The Court: It is for no other purpose at all.

1248 Some weeks prior to the demonstration I was asked if we would be willing to demonstrate the operation of the plant to members of the Petroleum Association and I consented on condition, that a list of those who were to attend would be submitted and that they would be present throughout the run from start to finish.

1250 586 Originally they set the time for the run at 12 days, but at the end of nine days they said they had seen enough and told me I could shut the plant down.

The run continued uninterruptedly for the nine days. There were present about 20 individuals rep-
1252 resenting about 15 refineries scattered throughout the west, east and south. When we told some of them the results that we had they said they didn't believe it could be done. At that time there was no other process, to my knowledge, where a run comparable with that had ever been made theretofore in the world. I was supposed to be familiar with cracking processes.

Later in that same year I was requested to address a convention of petroleum refiners at Atlantic City. It was composed of members of the National
1253 Petroleum Association and the Western Refiners Petroleum Association. I explained to them the results of the process and the details of how it was accomplished.

Beginning in 1919 Universal acquired various licensees who erected a great many plants.

1255 From the beginning and up until 1931 the parties who were financially interested in the results of this particular Dubbs process, aside from Armour, who
1264 furnished all the finances, were R. J. Dunham, C. P. Dubbs, Croll, Levering and myself. Up until the end
1265 of 1930 there was no change in the stock ownership of the company and when the company was sold, it was the original stockholders who sold out their interest. Since 1930 neither Dunham, Dubbs, Armour's estate, nor I have had any financial interest in the company. I have, however, continued as Presi-
587 dent on a salary under an arrangement made at the time of the stock sale.

1266 The sale in 1930 resulted from the settlement of litigation that had been pending between our company and other companies.

Sale negotiations that were finally concluded were carried on for a period of about four years. The Texas Company was very actively concerned in those negotiations and settlement. The Texas Company had brought suit against Warner-Quinlan Company in New Jersey and Universal had brought suit against
1267 the Texas Company on the Dubbs patent in Illinois. The settlement of the interference between Dubbs and Behimer was left open and was not determined until a few months after the sale had been consummated.

Q. Now, were you familiar with the fact that in 1925 or thereabouts, 1926 and 1927 an investigation was being made for the purpose of determining whether the claims that were being made by The Texas Company in respect to priority of Behimer over Dubbs were well founded?

1268 A. I was.

Mr. Haight: Q. Did you know anything about the details of it?

A. Just that the investigation was being made to determine the facts.

Q. Did you ever hear of Mr. Otto Wannack being employed during that period of time?

A. I do not recall that I heard of him and I
588 do not recall ever seeing the man until I saw him in this court room.

Q. Were you acquainted or were you at all familiar or did you know that efforts were being made

to procure from employees' of The Texas Company information as to what Behimer had done?

A. I knew nothing about the step by step progress or method of their investigation. I merely knew that the investigation was being made to determine the facts.

Q. Now, then, did you know of the hiring of Mr. Behimer?

A. I did.

Q. And did you approve of it?

1269 A. I did.

Q. Will you tell us the reasons which led you to approve of the hiring of Mr. Behimer?

Mr. Von Holst: We object to that, your Honor, as calling for a conclusion.

The Court: If the motive is in issue the state of mind is important. You may answer.

A. There were two motives. I believe the primary motive was to get the facts that we felt were vital to our case and of outstanding importance in connection with that patent and felt that there was something phony in the claims that were being made in relation to the Behimer as to dates of invention and accomplishment. This was substantiated by our knowledge that in 1920 and 1921 they built 24 units in their refinery in Texas which did not embody this

1270 outstandingly important invention of clean circulation which was the subject of the interference 589 between Dubbs and Behimer.

It was a matter of public knowledge that these units probably cost five or six million dollars, even seven or eight million dollars including the auxiliaries.

Q. Had you had any experience with The Texas Company in prior litigation that made you feel that their claims must be investigated without going into the details of it?

A. Yes.

Q. Just state what it was. I am not going into the details of it.

Mr. Von Holst: We object to the question and would like a ruling.

The Court: He may answer.

1271 A. That was on their claims under applications

that were pending in the office known as the Adams patent in which they claimed to dominate the industry, us and all included, and then attempted a negotiation with us to sell out to them because they dominated the industry, and an offer of millions of dollars was made to us and declined.

The second motive for our hiring of Behimer was
1272 an inquiry into Behimer's qualifications. He had asked for a substantial sum under the terms of his employment and when I was told that he had outstanding ability, had worked in the same or parallel field with Dubbs, and was claiming to have invented a process that was of such outstanding importance as Dubbs had, I felt it would be wise to have such a man in our organization in case anything happened to Dubbs. Under the circumstances I felt the
590 payment to him justified and approved the contract.

The telegram (DX 230) was sent with my full knowledge by Reichmann from my office in New York to Dubbs. It correctly states that my understanding
1275 was that the intended negotiations were based on information that the party desired to make changes in his employment. At that time Universal had a very extensive research laboratory at Riverside. At the time Behimer was employed there were any-
1276 591 where from 20 to 50 technical men working there. there. At the present time there are probably
1277 200. We have always carried on research and development work there and have never done any manufacturing. We search the world for competent men and have more brought to our attention than almost any other institution. At the time Behimer was employed, and at present, our technical men are in the field of physics and chemistry.

As part of our contract with our licensees we fur-
1278 nish service that requires technical research. We send men on call to all parts of the world. We also give our licensees the benefit of research in any inventions made.

I know Ringolsky and Danciger who have testified
1279 in this case. The first time I met Ringolsky was in June, 1936 when he called at my office in company with his partner, Boatright, and A. Danciger and

Dan Danciger. He was there for two days and in one of the sessions he said he would not be back for several hours because they had an appointment to see Dearborn of the Gasoline Products Company.

No settlement resulted from the conversations which I had with them in June, 1936. In the latter part of July, 1936, Ringolsky returned with Joe Danciger. They were in my office for two days and
1280 again interrupted the conference because they had a session with Dearborn.

On returning from Dearborn's office they said he had threatened them with suit under the Behimer patent if they entered into a settlement or took a license with us. I told them that our contract with them would have a written commitment not merely to defend the suit, but to indemnify them against
592 any consequences not merely under the Behimer patent, but against any patent litigation in the world. That has been part of almost every license contract we have entered into.

1281 Ringolsky then asked how Universal could meet its obligations to all these licensees if it lost a suit, and suggested that we made a deal with the Gasoline Products Company so that if we gave a license contract, it would be under patents of both companies. At that conference a tentative agreement (PX 1) was drawn up and initialed by all the parties present.

1282 In our conference Ringolsky said that Dearborn had told them that we had taken Behimer from them but that he would succeed in his suit under the Behimer patent. My comment was that Behimer had been in our employ since 1927, that we knew all the facts and circumstances connected with the patent, that there would be no surprises in store for us if we got into litigation and that we believed Dearborn could not prevail.

Either in our July or February conference Ringolsky hinted at having some information which would throw our case against National Refining Company
1283 out of court, but he would not tell me what it was. On February 23, 1937 I again had a conference with Ringolsky in company with Joe Danciger. They spent a good deal of time for two days with reference to settlement of the suit against the Dancigers and their taking a license.

1284 Q. Mr. Ringolsky testified that on the occasion in February 1937 he asked you about Mr. Scofield and that you testified:

593 "Look out for that man Scofield, he is bad. He was associated with a lawyer by the name of Belknap who in his time was the best lawyer in the United States, patent lawyer in the United States, and Mr. Dearborn stole Mr. Scofield from me and he had, and he knew all about my patents, had records He stole Scofield from me and I stole Behimer from him."

Now then, did you make a statement to Mr. Ringolsky that Mr. Scofield was bad and to look out for him?

A. Well, with the exception that I did not say that Mr. Scofield was bad, that I did not say that Mr. Belknap was the best patent attorney in the United States, and that I did not say "Look out for Scofield," the answer is correct.

Q. Well, I said—he wanted to know if I knew Scofield. I said, yes, he wanted to know if I knew Scofield. I said, yes, he was in our employ, but that's many years ago, in the early twenties. He was the clerk in the office of Frank Belknap who had the

1285 drawing up and the prosecution of all our patent applications, and I was surprised to learn that he had left Belknap while Belknap was away, I believe in California, and had taken employment with our competitors, the Gasoline Products Company, and I knew nothing of his intended claim. He had knowledge of all the details of our inventions that were embodied in the applications for patents.

Q. But you did not attempt to characterize what kind of a man he was?

A. I said to him, "Since that time I think I

1285 594 have only seen Scofield once, and I know nothing of his progress or his career since then, and I would rather not comment on him." I had no feeling of bitterness against him during the years after he left us, and I have none today.

Q. Do you recall whether you used the word "stole" about Scofield?

A. I don't recognize that word, that I have used, because it would not have been a proper word to use.

Q. But you may have used it?

A. I don't know whether I would hesitate to use it or not, in its literal sense. He had a perfect legal right
1286 to hire Scofield and Scofield had the legal right to take employment. It was not a matter of theft.

Q. Now, Mr. Ringolsky testified, and the rest of them, Mr. Danciger, also, that out of the clear sky when they asked you whether Mr. Behimer was alive you said "You bet he is alive, but if Mr. Dearborn thinks he will ever take his deposition or cross-examine him he is mistaken." Did you make a statement of that kind?

Q. With the exception that I did not say "You bet he is alive and if you"—

Q. Just answer the question, please.

A. I did not because I did not know whether Mr. Behimer was alive or not, I had not seen or heard of him in several years. I said "I think he is so far as I know."

1286 595 Q. Did you make any other statement regarding Mr. Behimer or the testimony he would give other than what you have testified, which you state took place in July, 1936, to the effect that you knew all that Behimer had done, and if Mr. Dearborn thought he was going to get anything further than you did not think he would, or something or other to that effect?

1287 A. Not just that way. I said if there were any facts beyond that we did not know, and we assumed we had all the facts and that we could not see where they would win a case from us. At that time I knew of a provision in both Behimer's contract of employment (DX 231), and in the cancellation con-
1288 tract of 1932, with reference to his being accorded the express right to "execute all proper papers and testify relative to his former patents and patents applications now owned by his former employers or their assigns."

Some time after the meeting of February 23, 1937
1289 Ringolsky telephoned me from Fort Worth and
596 suggested that I come down to attend a meeting which I believe was to be the next day. I said I could not come and sent Behrens down that night by plane.

We have not as yet effected a settlement contract with Danciger. There are no active negotiations in progress at present, just a suit pending against them. There have been no negotiations since that time.

1290 597 *Cross-Examination by Mr. Thiess.*

I am not a college graduate. I did not even graduate from high school. I don't consider myself an oil technologist. I have testified that I made investigations about Mr. Behimer before he was hired. This was mainly information through Mr. Dubbs. I made no personal investigation. I quizzed
1291 Mr. Dubbs thoroughly I consulted with nobody else.

Q. Did you know that Mr. Dubbs was in charge of the work on this investigation that was to be made of the Behimer work?

A. Well, among other things that was one of his duties.

Q. That was one of his duties, was his duty?

A. One of his duties, yes.

598 *Redirect Examination by Mr. Haight.*

1291 Dubbs was in charge of all the research and development work that Universal was doing.

599 *Recross Examination by Mr. Thiess.*

Mr. Dubbs was the vice president of the company at that time. I forget what year he was elected.
1292 I cannot really tell you whether he was at that time or not, I think he was. He was not any officer of the company other than an engineer before he was made a vice president.

600 W. MEREDITH BEHRENS:

Direct Examination by Mr. Haight.

1293 I live in New York and am a member of the bar of New York. I am a graduate of Harvard College and of Columbia Law School. I became connected with

Universal Oil Products Company in April, 1931, as a general helper to H. J. Halle, its President. I have never been an attorney for the company in any other sense than to confer with the active attorneys of the company. I became secretary of the company in February of 1932.

C. P. Dubbs first became an officer of the company on March 1, 1926, as Vice-President in charge of research and development. He was re-elected in 1928.

1295 I. J. Ringolsky and some of the Dancigers spent two days at the office of Universal Oil Products Company in June of 1936 and I was present all through that conference. In addition, Ringolsky spent two or three hours of a third afternoon with me alone. The object of the conference was the settlement of the suit that had been brought against the Danciger Company by Universal and the taking out of a license. They left us in the middle of either the first or second day of that meeting to see Bearborn and they came back and told Halle and me that they had been there.

1296 The matter of settlement was left open when they left. They wanted to consider it further and were to send us some information so we could give them some further figures leading to a future conference. Joe Danciger and Ringolsky returned at the end of July, 1936 and a tentative settlement agreement, PX 1, was drawn.

1297 601 Again, they went to see Dearborn. On their return, Ringolsky told us that they had seen Dearborn in June; that he had just returned from seeing him again; that Dearborn had made threats of attack under the Behimer patent if they did not take a license agreement from the Gasoline Products Company; and finally asked Halle what he had to say about that. Halle said, "Perhaps you do not know that Mr. Behimer has been in our employ for a great many years and there isn't anything as far as we know that he knows about his early work that we have not already got, so I don't believe there will be any surprises if and when the matter is litigated.

That came at the close of a half hour while I was having PX 1 typed up. When they came into the room we turned to that and polished it up and then it was signed.

Nothing was said at that time by Ringolsky to the

effect that Behimer had been stolen from The Texas Company by Universal. There was only that one short episode following their coming back from Dearborn that related to Behimer.

1298 PX 1 was never carried out. We subsequently received word from Danciger declining to carry it out.

I saw Ringolsky and Joe Danciger in the New York office in February of 1937. This meeting lasted for two days, then Ringolsky came back alone and we had another session, he and I alone, the third day.

Q. At that session did you hear Mr. Halle make the statement that Mr. Ringolsky has testified that he made with reference to Mr. Scofield, "Look out
602 for that man Scofield he is bad. He was associated with a lawyer by the name of Belknap, who in his time was the best lawyer in the United States, patent lawyer in the United States, and Mr. Dearborn stole Mr. Scofield from me and he knew all about my patents had records. He stole Scofield from me and I stole Behimer from him."

1299 A. No, sir.

Q. Do you recall any conversation with reference to Scofield at that time?

A. I do, quite well.

Q. And what was the substance of the conversation, what Mr. Halle said about Mr. Scofield?

A. First of all Mr. Halle told Ringolsky that Scofield had worked for Mr. Frank Belknap. He gave him a general statement, as I recall it, of the position he occupied with Mr. Belknap. He also told him that Scofield had drawn the particular application of the '629 patent here in suit and that with Frank in the west—

Q. You mean Mr. Belknap?

A. Mr. Belknap on the Coast. And as far as Mr. Halle knew that Scofield had left the company and gone to the Gasoline Products Company, our competitor. And Mr. Halle went on and concluded, "I rather not pass judgment on the man, I haven't seen much of him in the last few years and I don't know much about his ability after the passage of the years."

Q. What was said, if anything, about Universal having stolen Behimer and The Texas Company having stolen Scofield?

A. I don't believe Mr. Halle used the word

1300 "stole," and I never heard anything, at least I
603 have no memory of hearing anything of that import.

Q. On that occasion?

A. On that occasion and up to that time. I am positive that Halle never said to Ringolsky or to Joe Danciger in reference to Behimer, "You bet he is alive, but if Mr. Dearborn thinks he will ever take his deposition or cross examine him he is mistaken." I recall nothing further other than I have already testified in regard to any conversation regarding Behimer and Dearborn up to and including that time, February of 1937.

1301 I drew the agreement terminating Behimer's connection with the company and at Behimer's request included the last paragraph that has been the subject of so much discussion, and that fact fixes in my mind that no such statement was made regarding Behimer such as Ringolsky and Danciger attribute to Halle. The draft originally did not contain that last paragraph and after Behimer read it in Chicago he insisted that it go in the contract. It went in at the direction of Mr. Alther, our Senior Vice-President, given to me over the telephone. The paragraph to which I refer is contained in PX 5 as follows: "I hereby retain the right to execute all proper papers
1302 and to testify relative to all patents issued and all patent applications filed in my name prior to October 1, 1927, and now owned by the former employers
604 of me or their assigns." Another thing which fixes the matter in my mind is the confirmatory Behimer assignment that passed through my hands. I was thoroughly familiar with its contents before it passed through the patent lawyers for approval or consideration before Behimer signed it: This is the
1303 direct assignment that Behimer made to The Texas Company. The fact that I had drawn this contract and that it contained that provision made an impression on my mind and if Halle had made any such statement as Danciger and Ringolsky attribute to him I think it would have taken me right out of my chair.

During 1937 I was in Fort Worth twice, both subsequent to this meeting in February. My first visit was on March 4th when I saw Joe Danciger alone in his office. He told me about a directors meeting at

which the question of settlement and the taking of a license from Universal was to be discussed and he wanted to know if Halle would attend such meeting where they could get the Danciger brothers and Farley, another director, together. Farley was allegedly in control of the directorate. It was very hard to get them all together.

Subsequently in the same month, Halle and Ringolsky had a telephone conversation, as a result of which
1305 Halle asked me to fly to Texas. I arrived by plane in Fort Worth the next morning. At about 9:30 or 10 o'clock Ringolsky asked me over to the Dancigers' office where he and the other Danciger directors were in session when I arrived. I could not have seen him the day before the meeting as he testified, since I was in New York. I am absolutely positive of
605 this. It was St. Patrick's Day that I got there.

I was in the directors meeting from 10 o'clock until about 3 o'clock in the afternoon, including going out to lunch with them. There were all of the directors, all of the Dancigers, Farley and also a number of others.

1306 They asked me questions for over three hours. I was asked to leave the meeting at about 3 o'clock and Ringolsky walked with me into another office where I met Hock. Ringolsky then said, "I have a two edged defense to this case; first, I think that I can beat you on the basis of a decided case because of the Behimer and Scofield situation; and secondly, you have put into your suit a number of unrelated patents, that is the second defense."

1307 He told Hock that he had seen Dearborn in June or July of 1936 and that Dearborn had told him that Behimer had been stolen from The Texas Company and that when he told Halle about it Halle said, "Yes he took Mr. Scofield and we hired Behimer." Beyond that, there was nothing else said. Ringolsky then gave me the Keystone Driller citation.

1308 I never made any such statement as Ringolsky attributed to me, to the effect that I thought that he, Ringolsky, could not use what Halle had said because it was said in the course of negotiations for a compromise or settlement with the Danciger Oil & Refining Company. There was no talk at that session because Ringolsky was anxious to get back in his

directors' meeting and said, "Come over tonight and we will talk further." And I have no memory of anything being said to amount to anything following
his handing me that slip of paper with the cita-
606 tion on it. But on no occasion did I ever use that
expression of some kind of privilege because of course it had been used in the course of negotiations. Ringolsky had been at the bar for over fifty years and I don't think I would have been as stupid as to say that.

Ringolsky made no statement at that time as to what Halle had said to him in New York. I am absolutely positive of this. That came that night when we were together at his hotel.

Q. Mr. Ringolsky further testified that he told Mr. Hock in your presence "That in my opinion your case against Dancigers can be thrown out on account of the coming into court with unclean hands, and I gave him an authority and Mr. Behrens says 'I agree with you, we have to dismiss as to Dubbs but we have the other patents'."

1309 A. I never discussed that or made any such statement to him as to the first part of it at that time. Ringolsky did say they thought they had a defense that was water-tight. I did not say that we would have to dismiss as to Dubbs. I had not at that time ever read the Keystone Driller case. I first read it in Mr. Reichmann's office a month and a half ago. I had always believed that the doctrine of unclean
1310 hands was not applicable to patent suits. When I returned to New York I sent a copy of the memorandum of the Keystone case to all of the attorneys.
PX 11 is a photostatic copy of that memorandum
607 and of the memorandum that Ringolsky gave me.

1311 About 8 o'clock on the night of my visit to Fort Worth Ringolsky and I talked about three hours in his hotel room. That night was the first time that Ringolsky ever made the statement that if we pressed the case against him he would subpoena both Halle and Dearborn and go fully into all the circumstances of hiring Scofield and Behimer. This was the first time that I ever thought of it or heard of it.
1312 It came following a long talk on the res judicata

aspect of the National case. I told him I thought we also had Danciger on the res judicata aspect and he said that he would blow the case out of the water before we ever got to it. He said, "First of all I will ask for a separate trial before Judge Wilson on the question of hiring Scofield and Behimer." This was the first time I ever heard of it.

I met Ringolsky at his invitation again on April 23, 1937, in Kansas City at his home. We had a long
1313 discussion there, primarily about the dismissal of the National case which occurred that same day.

Q. Now then, Mr. Ringolsky testifies that on this occasion, as near as I can make out from his testimony it was this occasion, he stated again that if we pressed our case against Dancigers he would raise the defense of unclean hands, and that you told him that "I agree with you we have to discuss as to Dubbs but we have other patents." Did you tell him that then?

A. I did not make that statement at that point. True in our discussion that evening or about
608 that point I said, "Now, let's assume that the '629 patent suit is lost, in any event it expires in another year, or shortly more than another year, what are you going to do about the other patents that the company owns that your client is using, we believe. It seems to me that the sound thing for you to do as a lawyer is to advise your client to settle and take a license." There had also been much discussion as to the yields and what we could do in improving the Danciger operations.

1314-5 Ringolsky did not state in my presence, either on the occasion that he handed me that citation or on any other occasion, that Dearborn had told him that Universal had employed or bribed some employes of The Texas Company to get into their files and extract written documents from the files in connection with work sheets. There was one vague reference to the documents at that night meeting at the Blackstone Hotel at Fort Worth and that I vigorously and specifically denied to Ringolsky.

I never discussed Behimer's salary with anybody, nor did I make the comment that Hock attributed to me to the effect that I stated to him that he was

a little wrong on his figure of $100,000 being paid to Behimer. Hock, Ringolsky and I were together only four or five minutes and there was no dis-
609 cussion of Judge Wilson or what Halle said in connection with Judge Wilson or as to Judge Wilson's believing the statement of Ringolsky as to what Halle had said to him. If the statement had
1317 been made, I have good reason to believe I would not have remained silent as Hock said I did but would have said otherwise. I never heard the statement by Halle that Dearborn would never be able to cross-examine or take the deposition of Behimer, and if I had I would have denied it vigorously. This is the statement to which I referred in my previous answer, that I have good reason to believe that I would have said otherwise.

610 *Cross-Examination by Mr. Thiess.*

1318 I was present during the testimony of Mr. Halle.

611 CARBON P. DUBBS:

Direct Examination by Mr. Reichmann.

1322 I am the Carbon P. Dubbs who is patentee of Dubbs Patent No. 1,392,629, colloquially called the "Clean Circulation" patent. I am the son of Jesse A. Dubbs, after whom the Dubbs Cracking Process was named. I am 57 years old.

I was associated a good many years with my father
1323 in his business. He was engaged in petroleum work such as production, refining, and research. He began his work when he was about 20 years old when he was Chief Chemist for the Clipps Refining Company which became one of the Standard Oil Company group. It was located at Franklin, Pennsylvania.

My father became identified with the oil industry some time in the late '70's when it was in its infancy.
1324 He specialized in petroleum and made quite a few inventions. About 1906 he moved to California. At the time of his death there, he had been retired, but just prior to that, he operated a refinery and an

asphalt mine in California. He was the inventor of what is commonly known as the Jesse A. Dubbs
1325 Pressure Process. From about 1900 to 1912, I assisted my father in the operation of his refinery and the asphalt manufacturing plant and also in other research work.

Since its inception in 1913 or 1914, I have been identified with the Universal Oil Products Company. In the beginning, I worked in a technical capacity doing research and development relating to the production of gasoline. This work was predicated primarily upon my father's initial pressure patent.
1326 612 That was the foundation and basis of my work.

During all of the time I was with Universal, I was engaged in such research and development work.

My connection with Universal terminated about June, 1930, and in January, 1931, I sold out all my stock interests. I had been quite a substantial stockholder. That was at the time when all the stockholders sold their interests.
1327 I became Vice President in charge of research and development in March, 1926. Prior to that time, I had held no official position with the Company, although the research and development was primarily in my charge and under my supervision, and continued down to the time I left the company.
1328 I recall Interference No. 49355 between Behimer and Dubbs in the United States Patent Office. It was declared in 1923 and immediately thereafter, I got access to the Behimer files in the Patent Office and studied them. I learned that Behimer claimed his date of conception as sometime in 1916 and his successful reduction to practice as May, 1917. Prior to the time that I got access to the files, I did not know his claimed dates of conception and reduction to practice.

Q. Now, Mr. Dubbs, before going further, I want to direct your attention to this operation in 1919 of the clean circulation process at Independence, Kansas. What is the fact as to the erection of that apparatus that was operated in 1919 for the purposes of clean circulation, having been under your super-
1329 vision and control?

A. You mean, was it under my supervision?

Q. Yes.

613 A. It was.

Q. Yes. And constructed according to your directions?

A. It was.

Q. And do you recall that in 1919 there was a demonstration of that apparatus and the clean circulation process at Independence, Kansas?

A. I do.

Q. About how many refineries were represented at that demonstration?

A. There was at least twenty there continuously.

Q. Yes.

A. During the demonstration, I think others dropped in from time to time.

Q. And what was the purpose of that demonstration?

Mr. Thiess: If your Honor please, this is for the —I am not objecting to this but that is going in for the same purpose as the other?

The Court: For the same purpose.

Mr. Reichmann: That is all your Honor. That is all.

A. To demonstrate to them the operation of the clean circulation.

Mr. Reichmann: Q. And the continuous process or operation?

A. That it was continuous, yes.

Q. That was some time in the summer of 1919, wasn't it?

A. It was in the summer of 1919.

1330 614 Q. Were these representatives of these various refiners there constantly during the operation at that time?

A. They were.

Q. The operation itself was under your supervision, was it not, and control?

A. It was.

It had been intended to operate for twelve days, but at the end of the ninth day, the representa-
615 tive, said they were satisfied that the operation was successful and demonstrated that the process was continuous.

1331 This demonstration was a revolutionary step in the production of gasoline. It became internationally known and, of course, created a great deal of talk and publicity. It was published in the National Petroleum News, the Oil & Gas Journal and other publications.

1332 At that time, as one skilled in the art, I was acquainted with the methods and processes of cracking oils in use throughout the United States and elsewhere, and I had never heard of any continuous process in operation employing the principle of clean circulation.

At the time I gained access to the Behimer file wrapper in 1923 and learned that he claimed successful reduction to practice in May, 1917, I was dumbfounded, because The Texas Company had installed a commercial cracking plant consisting of a battery
1333 of 24 stills using dirty circulation which not only was hazardous to life and property, but very inefficient compared to clean circulation. I could not understand, if they had had clean circulation, why they did not install and use it on these 24 units which had been put into operation at Port Arthur about 1920. I estimate that these units cost between four and five million dollars. It was that circumstance that first caused me to doubt the truthfulness of the disclosure as to reduction to practice in 1917.

1341 From my knowledge of the litigation between
616 The Texas Company and Universal Oil Products Company and also from the litigation between Universal Oil Products Company and Standard Oil of Indiana, I had formed the belief that The Texas Company had participated in putting the Adams patent through the Patent Office by improper means. This experience was gained in the Warner-Quinlan and Standard Oil of Indiana suits. I was afraid that they would use the same tactics in the Behimer application.

1342 In the suit of Universal Oil Products Company against Standard Oil of Indiana, they set up the same patents against the Dubbs Pressure Patent. The matter was covered by complete testimony on that subject and then following that, the Texas Company started suit on the Adams patent against

Warner-Quinlan, a licensee of Universal Oil Products Company.

1343 To determine the facts about the reduction to practice of the Behimer process, I had certain of our men start investigations to see what facts they could find out concerning the early work The Texas Company alleged it had done. Our men were Howard and Olsen. Howard was an engineer with the
1344 company who had done a great deal of investigating. Howard worked for Universal and Olsen worked for him. My direction to them was to ascertain the facts, and I suggested that they might find who had worked on the process at that time and see if from them they could ascertain the facts. This was about 1924.

Later, we employed Otto Wannack and a Mr. Kaufman, who was a chemist experienced in the petroleum art. He was then in the consulting business in Denver, but previously had worked at The Texas
617 Company and knew a lot of men there. Kaufman was directed to get the facts in the case.

1345 Otto Wannack was employed by me in the summer of 1925. I had known him since 1916 or 1918, and first met him in my father's office in California,
1346 where he had been helping my father in research work. Before I employed Wannack in 1925, he had installed a couple of casinghead gasoline plants in California and had worked with Lincoln Clark on his experimental work in the cracking of petroleum to produce gasoline.

Wannack was employed by me when I received a letter from him asking for employment. He had done
1347 a little work for Universal around 1920. At the time I employed him, he was a man of good character. I discussed his qualifications with Belknap and suggested that possibly he would be a good man to help ascertain the facts in the Behimer case. I asked him to come to Chicago. When he came, I explained the situation briefly to him and after he said he would take the job, I gave him the Dubbs
1348 and Behimer file wrappers to study. Each day or so, we would discuss different points of the file wrappers. After about two weeks, he claimed that he thoroughly understood them and then took the drawing and preliminary statement of The Texas Com-

pany and started out. He was to contact the men who had worked for The Texas Company and see if he could ascertain the facts. I told him that if any
1349 of the men had made personal memoranda of any of their work to get a copy of it. My recollection is that I told him I didn't see how it could be true that they had established the use of clean circulation since they had 24 stills with dirty circula-
618 tion. It was a serious matter as to our patent. We agreed on $200.00 a month salary and I also told him he would be allowed his expenses, for comfortable but not extravagant living. I instructed him
1350 to pay the men that he contacted for their time and a reasonable amount over. I suppose I told him to pay these men an amount gauged by their earning capacity at that time. I probably also told him to watch out for false statements.

Wannack was never directed or authorized to get access to the files of The Texas Company; that was
1351 never even discussed. I did not make any such statements as Wannack has testified to—that I told him to secure run sheets or blueprints, and that the sky was the limit in securing such evidence. I only told him to get such information from people he might contact that they would have in their personal
1352 possession. As to Wannack's testimony—that we discussed the risk he might incur in getting information and that I had said that we would give him protection if he came in contact with the law—nothing of that kind was ever mentioned at that time. There wasn't any discussion about it or even a thought about it.

1353 Just before starting the investigation work, Wannack said there might be occasions when he would prefer to wire under an assumed name and said that if I should get a telegram from him signed "Cal", I would understand who it was from. I did
1354 not tell him that he would be known only to Dunham, the chief bookkeeper and Mrs. Egeler. I think I instructed him to communicate with and report to me either by phone or in person; that was our common practice, and since I was away from the office
619 most of the time, it was the only way I had of hearing what the reports were and for making immediate decisions. I told him I was out of the

1355 city a great deal and if he wanted to get in touch with me to communicate with Mrs. Egeler and she could communicate with me and make the contact. She was my secretary and knew of my whereabouts all of the time. I would always wire her and she would phone my house or wherever she could catch me.

1356 There was no such conversation between me and Wannack as he has testified to—that we discussed the cost of the investigation, that I asked him if it could be done for $5,000.00; and that he said he would not 1357 undertake it if he had to be pinned down to that. I did not ell him that he was free to call for money as and when he wanted it. I told him to write to Chicago as he wanted funds. If I was there I would approve or refuse. If I was not there, one of the other officials of the company would do so. I did advise him that his length of employment would depend entirely on how things proceeded. There was no set time for his employment.

1359 Q. Did you ever indicate or say to him that there were no strings tied to the amount of money he might spend or obligate himself for in Texas?

A. I did not. There was a very definite limit put on it.

Q. And what did you say to him with reference to the amount or limitation of his spending? Did you cover that yesterday in your testimony?

A. Well, I don't know whether I did not, but 1359 620 there was no definite limit—a few hundred dollars at a time; that he mustn't draw money way ahead.

1360 From time to time, he sent in expense accounts which were O. K.'ed by me personally if I was in the city at the time. I think eventually I O. K.'ed most of them.

Wannack never discussed with me the question of taking some men down to Texas for the purpose of getting into the office of The Texas Company at night. I did not hear of this until I learned it from the affi- 1361 davits that were introduced in evidence in this case, and from Dearborn's deposition. Neither I nor any other official ever authorized him, either directly or indirectly, to go into any office or do anything of that kind.

I attended the meeting at the hotel in Beaumont, Texas where Wannack, Brunow, Beyt were present.

Wannack wanted me to stop off and meet a party he said probably would be very helpful. I was going to New Orleans so I told him I would go by the way
1362 of Beaumont, which I did. The party he had in mind was Beyt and that was the first time I ever met him and I never saw him again until we employed him approximately a year or so later. At that meeting there was no discussion as to the possibilities and
1363 dangers of getting the files because they were under lock and key. I think my talk at this meeting was wholly with Beyt. After asking him about his schooling and experience, I went over the Dubbs and Behimer applications and these early alleged runs with him, but he was noncommital as to his knowledge of the alleged early runs. I told him that if he felt
1363 621 he could be of help to us in establishing the truth, I would be very glad to consider taking him in our employ, but that I didn't want him to do it unless he made up his mind thoroughly because I had engaged an engineer of The Texas Company named Powell who after he had signed a contract, had asked to be relieved and the contract was cancelled. The Powell incident had occurred some six months before.
1364 I understood Powell didn't know anything about the Behimer operation. Our business had been growing rapidly and since Powell had had a great deal of petroleum experience, we wanted him in our engineering department.

1365 At the Beaumont conference, I asked Beyt about the jet pump. He said he had operated it and made a sketch of it. When I asked him about the 18-B
1366 operation, he would not say anything. Nothing was said at that meeting about moving Beyt to Chicago. There was nothing mentioned about the impossibility of employing Behimer and only the patent application was discussed.

As far as I know, there was no affidavit prepared for Beyt to sign at that meeting. There was no dis-
1367 cussion of an affidavit and I did not know about the preparation of such an affidavit. I did not collaborate with Wannack in the preparation of an affidavit. The first I ever heard about such an affidavit was in this case.

As to Wannack's testimony about going East to get keys for the file cabinets after getting the num-

1368 bers of the cabinets from White, there was no
622 discussion between me and Wannack when he came back to Chicago about such matters. He did not show me any keys and he did not tell me anything about having gotten any keys. His statement that I was very happily surprised when he showed me the keys is untrue.

1369 Wannack has testified that after he had gone to Beaumont with the keys he came back to Chicago and told me that he could get some evidence in New York and that I said to go ahead.

Q. Do you recall an occasion when he spoke to you about going to New York?

A. Not in that sense.

Q. Well you knew of an occasion of his going to New York, didn't you?

A. Yes, sir.

Q. Now what were the circumstances under which
1370 he went to New York on that occasion?

A. It was after I told him that I would have to relieve him from any farther duty; that Mr. Olsen from New York phoned me and asked me if Wannack could help him there on another matter.

Q. What other matter?

A. It was relative to the Standard Oil of New Jersey looking up infringements, I think, and I explained to Olsen that he could; that he would have to keep a very close hand, could only use Wannack as an observer.

Q. Did it have anything to do with the further investigation of this Texas operation?

1370 623 A. It did not.

Q. Now he further testified:

"Q. What did you do in New York?

"A. I got an address from the Chicago office to get acquainted with a man by the name of Olsen.

"Q. And did you meet Mr. Olsen?

"A. Yes, I did.

"Q. What did you and Olsen do in New York?

"A. Well we talked the matter over. I did some investigation on the possibility of getting into the office, and while it was not possible I gave it up."

Did you ever know about his making any such in-
1371 vestigation in New York?

A. I never knew it, and I don't think he did.

Q. Did you ever authorize him or direct him to do anything of that kind?

A. No.

Q. When he went to New York did he go for any other purpose than to help Olsen in connection with some infringement investigation concerning the Standard Oil of New Jersey?

A. That was the only thing he went there for.

As nearly as I can recall, it was in August, 1926 that I took Wannack off the work down in Texas. At that time he came unexpectedly to Chicago and asked for a package which he said he was expecting from Beaumont, Texas. A day later a package came containing photostats of some run sheets.

1372 624 He explained them to me. He said that he had arranged to get these originals; that is, an employee of The Texas Company would get the originals, take them up to Beaumont and have them photostated there, and then take the originals back and deliver to him these photostat copies; and that he was at that time followed by a detective and he hesitated on picking them up at the post office—or at the photostater's and had them mailed up to the office at Chicago here. In a boastful way he explained that the man that got these originals did not have keys and that he asked them to get the numbers of the files and he got the keys for them, had keys made and took them and gave them to them and they used those keys, as I understood it. And I called his attention that he shouldn't have done that and ought to have

1373 known better, and he was never authorized to do it, and that he would have to discontinue his work. He said that he had saved no money and it left him in a bad position, and I told him that we would continue his work, or his salary until he could find another position; but he must do it within a reasonable length of time.

Q. Now before going any farther, did you see or receive any keys? Wannack testified that he sent the keys in a package up to the Chicago office?

A. No.

Q. Did you ever see them?

A. No, no.

Q. What else did you say to him, if anything,

1373 625 about his undertaking to get into the files of The Texas Company?

A. Well, that he hadn't any right to do that and he shouldn't have done it.

Q. And what did you say to him, if anything, about taking him off of that work?

A. That I could no longer use him; doing things like that without first taking it up with us, I would lose faith in him.

1374 Q. Yes.

A. And could no longer use him.

Q. All right. Now then you may go on and tell what happened after he was taken off of that work.

A. Well he brought up the question that he had saved no money and it left him stranded there, and that it would work a hardship on him; and I explained to him that we didn't care to work a hardship on him; that we would continue his salary a reasonable length of time until he could find another engagement.

Q. Yes.

A. And I think there were two or three days elapsed, and during that time it was when Olsen called up and asked me if he could use him to help him over in New York, and I consented to Mr. Wannack going over there. And I think before he went over he said that—Mr. Wannack felt that he could get a position out in California, and if I would pay his expenses out there and continue his salary until he got located, and I told him I would, and I sug-

1374 626 gested that he might keep his eyes open out there, and if he saw any infringers, why to let me know, but to not attempt anything, either contacting employees, or anything else—just by observation. He said then that he wanted to go back by way of Texas

1375 because he had some matters to straighten up, I think, with Mr. Brunow, or if I would do it; and I told him no, that I would not, that he would have to straighten it up with Mr. Brunow. Well he said his wife's folks lived there, and there was some matter pertaining to that that he wanted to go back via that way, and I told him all right he could go down to Texas, but to do nothing further in regard to the Texas matter.

Q. Then what happened?

A. Well he went to New York, was there I think

possibly about a week, and then Olsen finished with him. I think he went to Texas, then to California, and I think it was the last of the year that I finally asked for his resignation, which he gave me.

I had known that he had employed Brunow to assist him in this investigation and that he had Brunow on a salary.

1376 When Wannack came back from California to Chicago, I declined to help him start a bottled gas business, but did lend him some money. He worked on a gas generating machine for domestic use in places where there wasn't a supply of gas, and I introduced him to a Mr. Goldberg who took it up and they carried on research work. Wannack was very active in that until he became sick.

1376 627 (Wannack's letter of resignation to Dubbs, dated
1377 December 12, 1926, received in evidence as PX 12.)

1378 In the latter part of September or October, 1927, Beyt came to Chicago and said that Murray had asked him to discuss taking a position with us and after talking it over with him, we entered into a contract for employment. At that time I did not know
1379 that he had any files of his own connected with The Texas Company operations. It was a considerable time after that I learned that he did have some files. I do not recall that he ever spoke to me about safeguarding his files. I think he took the matter up with my secretary, Mrs. Egeler, and she took care of them for him. The first time I saw the files was a consider-
1380 able time later when I conferred with him about something that was active in the interference.

1381 We decided to employ Behimer, if we could in May or June, 1927. Prior to that, I had known of him and the work that he had done. Col. Walker of the Massachusetts Institute of Technology, Dr. Walter Cross, and Mr. Risdon, Chief Engineer of The Texas Company had spoken of him very highly. Our purpose in employing him was to ascertain the facts as to his alleged experiments and invention and to add to our staff of research men.

1382 The Universal, of course, was research and development entirely; they had no manufacturing; and a business of that kind naturally is progressive. It called

for constant improvement and you must keep
1382 628 abreast of the times. You may say inventors are not made, they are born, and as you well know they are not plentiful, they are rather rare; and I considered it an enormous assistance to obtain his services, and he did do very valuable work.

I spoke of our trying to employ Powell and from
1383 time to time we employed other men such as Dr. Faragher, who was then Assistant Director of the Mellon Institute at Pittsburgh, Dr. Henry from Hol-
1384 land, who was connected with the Shell Company,
1385 R. C. Cook from Galena Signal Company, G. B. Murphy from the Atlantic Refining Company, R. B. Day, from the Richfield Oil Company of California, Dr.
1384 Ipatieff of Russia and Dr. Tropsch from Germany. These men were paid a salary and a bonus. The object of the bonus was to reward a man according to the amount of development work he had done. The bonuses were in proportion to the importance of their contribution—there were no bonuses less than 10%—with the idea of having them participate in the fruits of their labor.

1385 During Behimer's employment with Universal he thought the best field for him would be basic
629 research work on anti-knock. This related to com-
1386 pounds of petroleum that retard the explosion so that you can operate under pressure and get more efficiency out of gasline. That was one of the great problems that the industry was seeking to solve and it was work of his own choosing.

He decided to build a miniature plant, which seemed a very difficult task, but by calling in different engineers they finally developed one that gave remarkable results of operation. He supervised it and con-
1387 tacted the different people. The Commercial Development Department of Universal found it was so well adapted for making tests on the oil of various licensees to determine their guarantees that they kept borrowing it. This materially interfered with Behimer's work and so they built a second one; this also was borrowed a great deal of time but he went on with his work.

During the period of his employment with Universal he acted as consultant and in some cases as an expert. He assisted in the Warner-Quinlan case and

1388 also in the Walter Cross latent heat interference case. He was constantly engaged in aiding the research and development work. He would average not less than ten hours a day.

1389 The letter from F. C. Fantz to Olsen dated November 30, 1926 (DX 221) refreshes my recollection as to the time when I made up my mind to employ Behimer. November, 1926, is the time. Fantz was an engineer formerly employed by The Texas Company and at that time Vice President of the Midwest Piping and Supply Company at St. Louis. I was very well 630 acquainted with him and used him to give Olsen 1389 a letter of introduction to Behimer.

1390 As I now recall after Kaufman was sent down to Texas Wannack was taken off the job.

1391 It was in May or June that I asked Murray, sometimes called Judge Murray, to contact Behimer and feel him out. However, he did not offer him any position because he felt that it would not be received favorably. I then decided that I would like to bring a meeting about with Mr. Behimer where he was away from his work and he could have time to give consideration to it. And with that in mind I located his father at Harlingen, Texas, through Mr. Thompson, and then I discussed it with his father. Later, I was 1392 brought in contact with Behimer. This resulted in the employment contract which I dictated and submitted to him down there in Texas.

In the discussion relative to his employment Behimer asked for the right to testify in behalf of the Texas Company if he were called concerning the work he had done for that company and it was put in the contract. I told him if The Texas Company did not want him, we might want him to testify.

1393 At that time I did not know what salary he was getting from The Texas Company but did discuss with him the amount we were willing to pay. The telegram (DX 228) dated July 20th, which I sent to R. J. Dunham, refreshes my recollection about the matter. I 1394 said that it might be necessary to pay a bonus of $25,000.

1394 631 In discussing the matter with his father, Mr. Behimer's father, prior to contacting Mr. Behimer himself, I had discussed the terms of salary we were willing to pay.

Q. What did you tell the father?

A. That we were willing to pay him a salary of $15,000 a year. For the first five years, $5,000 bonus at least, and the second ten at least, and any increase over that would be dependent upon what he did in his research work.

Q. Yes.

A. And his father brought up the question that he would be put to some expense and therefore he thought it would be necessary that we advance him some of the money, with the idea of advancing him part of this bonus. I think he suggested the $25,000, the first five year bonus. His father would not send for him until he was thoroughly satisfied that I had made a firm offer.

I recall receiving a wire (DX 229) from Reichmann dated July 21, 1927. I telephoned the Biltmore Hotel, New York, as requested but the connection was very poor and Reichmann said he would send me a tele-
1396 gram. This telegram (DX 230) was received by me on July 22, 1927 and pursuant to that I came to Chicago about a week later for a conference. That was before the contract was entered into. I think Halle, Dunham, Belknap, Reichmann and I were at the conference.

1397 As stated in the telegram, negotiations were
1397 632 based on information gathered from a conference with Behimer's father, that Behimer wanted a change in employment, and I communicated that either to Halle or Dunham. When I talked to his father he intimated that Behimer was not entirely satisfied with his position with The Texas Company and that he would consider making a change.

In this conference at Chicago there was a discussion about the salary and bonus. Universal's officials understood that the salary would be $15,000 with the five and ten thousand dollar bonus, but had thought that the $25,000 mentioned in my telegram was an additional bonus instead of an advance payment of the original bonus terms. I explained this and urged
1398 the necessity of getting this man to know the facts in this very serious situation and said that he would not only be valuable in research work but would also be able to help us in the Cross interference, in which that fraudulent notebook was exposed. I knew that

Behimer had worked with Dr. Cross at Kansas City for sometime before he was employed by The Texas Company.

Following that conference I went back to Texas and
1399 eventually the contract was signed. I then suggested to him not to go back to The Texas Company but to send in his resignation. I told him I suggested this so that it could not be said that he went back and got any records after he made a contract with us. At that time it was agreed that he was to have a vacation as he suggested and his salary was to commence at once. He then went to California.

1400 633 When he came back from California he found our quarters at the office very cramped so I had him stay at my house for a while so that he could concentrate on writing up the history of his early work pertaining to these interferences. I suggested that he do the best he could with his own memory since there were no records available.

1301 During the time he was engaged in this work I conferred with him from time to time. Behimer has testified about my participation in the dictation of his affidavit. The extent of my participation was that after he had completed a drawing of an apparatus we would discuss the details and then either he or I would dictate a description as a memorandum. He would then go over it, put it in final form and it would then be written into the affidavit proper. This was done to expedite matters. When I dictated a description of a drawing we had discussed he would study the memorandum, make whatever corrections he wanted and then have it written correctly into the affidavit.

1402 Q. Now Mr. Dubbs, what is the fact as to that affidavit being or not being the work of Mr. Behimer and his best recollection as you and he understood it?

A. It is absolutely all of his work.

Q. Did you at any time during the course of the preparation of that affidavit seek in any manner to influence him in its modification or composition or anything of that kind?

A. I did not.

1402 634 At the time it was drawn I had no knowledge of what his work actually had been except what he told me. He wanted to refresh his memory so that it

would coincide with the records of The Texas Com-
1403 pany but in the preparation of his affidavit he was depending upon his personal recollection since no records were available to him.

1405 I never authorized Wannack to pay any sum of
1406 money, not even as much as $5,000 for information that he might get or files that he might get from and through anybody.

I did not tell Wannack or Kaufman or anybody that Kaufman was to receive $15,000 for getting information from the records of The Texas Company.

Olsen was employed by Universal Oil Products Company as an engineer and spent a great deal of time in making models. He also investigated infringements. I did not authorize him to obtain copies of run sheets of the Behimer operations, nor did I authorize him to pay $2,000 or any other sum to W. M. Stratford and I did not instruct Olsen to contact Stratford.

1407 Q. Now Mr. Dubbs, you terminated your connection with the Universal Oil Products Company in 1930?

A. Yes.

Q. And that was some months before, was it not,
1408 that the stock was finally sold, your stock and all
635 the other stock of the stockholders of the Universal Oil Products Company?

A. About seven months prior.

Q. Seven months prior; and during that seven months prior to that time did you have any connection with the Universal Oil Products Company?

A. Practically none.

Q. And none since?

A. None since.

The following year after I left Universal I was elected president of the Village of Wilmette, Illinois and served for two 2-year terms and declined to run for the third. Since that time I have not been active in business.

1409 636 *Cross-Examination by Mr. Thiess.*

My first contact in the oil business was through my father. The very first work was whitewashing barrels so when the hot asphalt was run into them they

wouldn't leak, and I think that was called a laborer's job. And I think the next job was cleaning the stills. We were paid a premium for cleaning the stills. And then it was firing the stills and operating the stills. That was in Pittsburgh, Pennsylvania. I don't recall the company's name now, but it was at 57th Street in Pittsburgh. Then foreman of the stills and on up through that way, and finally up to the offices. At that time I used to work at the refinery during the
1410 summers and Christmas vacations. I attended the University of Western Pennsylvania, which is now the University of Pittsburgh, then I went to the Philadelphia College of Pharmacy and took up that special course, specializing in petroleum, under Professor
1411 Sadler, but I did not wait and get a degree. After I finished with school I went to California and had a choice of going with my father or with Duffy of the Gulf Refining Company, which was then contemplating building the Gulf Refinery down at Port Arthur. The first position I had was, I think, assistant superintendent and had charge of doubling the construction, we were doubling the capacity of the plant that was at Terminal Island, California. That was an oil refining plant, also we refined asphalt there which we made at Aledo, California. It was a company, Sunset Oil Refining Company and Globe Asphalt Company. My father owned the majority of stock. I remained on this work clear up till I became associated with the Standard Asphalt & Rubber Company, a company owned by Mr. Armour with a plant at Independence,
1412 Kansas. While I was at Terminal Island plant with my father I was assistant superintendent, superintendent, then the manager and vice-president and
637 treasurer,—not all at one time. There we used cylindrical shell stills. No pipe stills of any kind in the commercial operation. There were pipe stills for dehydrating the oil before sending it to the stills. My father had designed the dehydrating still. It is not the original one known as the Jesse Dubbs patent, but we used it for dehydrating oil down at that refinery there. That culminated in the patent which was later in litigation with the Standard of Indiana. I
1413 went to work for the Standard Asphalt & Rubber Company. In a technical capacity, as engineer, chemical engineer I did research work and made a survey of

the refining process to see if we could bring about more economical operations. While I was employed
1414 there I made some inventions. Very shortly after I went with the Standard Asphalt & Rubber Company the National Hydrocarbon Company, which was the origin of the Universal Oil Products Company, was formed, and I done work for all three, and finally devoted all my time to the Universal Oil Products Company.

1416 In my direct examination I testified that the research and development work that I was engaged in for the Universal Oil Products Company was predicated primarily upon my father's initial pressure pat-
1417 ent, that that was the foundation and basis of it. By that I meant that the Jesse Dubbs patent was the basis of the organization, the foundation of the Universal Oil Products Company. The Universal Oil Products Company was organized to take over the Jesse A. Dubbs patents, that's what it was created for, as I understood, and to carry on the work. And this particular Jesse A. Dubbs patent on pressure was the patent that was important, that was the basis and foundation. The Universal took over the Jesse Dubbs
1418 patents and in return my father, Jesse Dubbs, got 300 shares of stock in the Universal.

638 At the time immediately after the declaration of the interference involving the Behimer application and my patent I got access to the Behimer files
1419 in the Patent Office and I got permission of the Behimer application. And when I got that Behimer application I learned that Behimer had filed his application on November 21, 1918.

Q. Now, on or about that time in November 1918, or from August, September, October or November, the fall of that year, what process were you advocating at that time?

A. We were advocating the Jesse A. Dubbs and the C. P. Dubbs clean circulation, and several other patents that we had.

Mr. Thiess: Q. At that time?

A. At that time. That's 1923.

Q. No. This is in 1918.

1420 Q. What process were you advocating at the time that Behimer had filed this application in 1918?

Mr. Hall: Your Honor, there is where this line of

examination is not relevant to the issues. Now, nothing started in this case so far as this clean hands is concerned until after he obtained access to the records in the interference. Now, he is going back into this question, defendant's counsel, four years earlier than that. Now, I submit that that has no possible relevancy to this issue.

The Court: I don't see as it has. I think the way was opened to a good deal of this cross-examination by the direct examination in going back so far and introducing so many matters that I don't see had any bearing on the case, and that I should have stopped, but now, how does this have any relation to the question?

639 Mr. Thiess: The witness has stated he was
1421 very much surprised when he saw this, that they had this clean circulation. Now, if as of 1918, November 1918, which was the filing date of this application, the Universal Oil Products Company were not advocating clean circulation, then, there was no need of a great surprise and a great hunt because the date of the application was sufficient.

The Court: It seems to me it is wholly immaterial. The only thing I am interested in in this case is what was done with reference to Mr. Behimer and the records of The Texas Company in 1925 and 1926. That's what we are litigating here.

1424 Mr. Denison: Of course, your Honor has in mind that the principal object of cross-examination is always to challenge the veracity of the witness.

Mr. Hall: But not in collateral matters.

Mr. Thiess: There was a picture painted here in this record which counsel has just expressed, and it seems to me that we ought to have an opportunity to go into that.

The Court: Answer this question, but I am not going to allow you to go very far.

1426 A. I was advocating the clean circulation.

Mr. Thiess: Q. I would like to call your attention to a photostatic copy of a letter written from Independence, Kansas, August 21, 1918, together with a description and a drawing, and ask you whether you know what that is?

1427 Mr. Haight: This is a technical letter, if your Honor please, written by Mr. Dubbs to Mr. Holmes on

August 21, 1918. It can have no bearing whatever on this question. If it is for the purpose of contradicting Mr. Dubbs the matter is collateral to this inquiry,
1427 640 and he cannot be contradicted under the settled rules of evidence as I understand them. I cannot tell whether it is or whether it is not, but if it is for the purpose of contradicting him we would have the right to bring in testimony to show it is not. If it is
641 not, why we would go on with an endless treadmill.

The Court: I think it has no bearing upon the question that I have to decide in this case. I have allowed, as I have said, immaterial matter to go in, but it opens up further objections to these matters, opens up examinations, inquiries in other fields, and I am not going to permit it. It has nothing to do with this case, and the objection will be sustained.

1428 Mr. Thiess: In view of your Honor's ruling on this letter, I would like to offer this letter in evidence under the Rule.

1429 The Court: Yes, all right.

Mr. Thiess: As Defendant's Exhibit No. 241, under the Rule. And I would like to make an offer of proof that we want to show here that at the time, August 1918, Mr. Dubbs was advocating the dirty circulation process, trying to sell it to Mr. Holmes, vice-president of The Texas Company and that he stated that that process was the result of his many years of experience and experiments.

The Court: And the objection to that is sustained. And the objection to the offer, I presume, is made.

Mr. Reichmann: Yes.

The Court: Sustained.

I have testified about this plant at Independence that I operated. That was an experimental plant.

Q. And do you know when you first operated a commercial plant following this work in 1919 at Independence?

1430 Mr. Haight: We object to that, if your Honor please, we were cut off from all examination on that line. Our only point, your Honor will remember, and the only ground upon which you let the testimony in was to show that we had this demonstration which was broadcast, and that was all.

Mr. Thiess: Yes, but they did make a point, your

Honor, that The Texas Company did not install this plant until 1921, that is with the pump. Now the question is, when did the Universal install this—

The Court: I do not see the materiality of it. Objection sustained.

642 I have testified as to this meeting of the refiners at this demonstration at Independence. I
1431 could not recall who the refiners were that were there. They were very much interested and discussed it. I would not recall whether any of them took a license within the next six weeks or months. I do not know that it led to several licenses. I think that active negotiations were carried on with a great many of
1432 them from then on. I think that a license was shortly entered into after that, if I remember rightly, by Shell Union. The Shell Union were at the Independence deminstration at that time or shortly afterwards, my recollection is I could not speak positively on that. I have testified as to these 24 stills that were installed by The Texas Company and I have characterized those stills as dirty circulation.

Q. Now in those stills was the residuum recirculated through the still?

A. Yes, and no.

Q. Why do you characterize those as dirty circulation?

A. Because it was dirty circulation. The raw
1433 oil was sent through a continuous coil where it was preheated; then it entered the first of a series of four stills, part of the vapors were given off from the first still, the residuum then proceeded to the second still and more vapors were given off, the unvaporized portion flowed to the fourth still; more vapors were given off and the unvaporized portion was withdrawn. These stills were positioned in a furnace where the cracking heat was applied to them; the vapors that were given off of all four stills went up to a partial condenser, what we called reflux condenser. The part of the oil, that is the heavy end, was condensed and sent back and the dirty residuum in the first still then flowed with the rest of the dirty residuum on through the four stills, part of it being revaporized.

Q. Now, you heard Mr. Behimer's testimony, did you not?

A. I did.

Q. In order to make those stills clean circulation, it was merely necessary to put in a pump and transfer the reflux to the inlet of the heating tube, is that correct?

1434 643 A. No, that would not be correct entirely.

Q. Why not?

A. Because you would send it to the heating coil and then instead of doing all the work, the cracking work in the stills, it would be done in the heating coil, which could be done without making a change.

Q. Without doing that cracking in the heating coil, operating it in just the way they did it?

Mr. Haight: I object, if your Honor please, because it does not make any difference whether they could be or whether they could not be. The fact of the matter is, and it has been established by Mr. Behimer, that did not happen until 1921, and all of this testimony that we introduced just went to the question of what we thought from what we saw.

The Court: I believe I stopped the examination at one point and stated that all that was necessary was to show that Mr. Dubbs believed that the statements made by Texas were not true. That is all that was necessary to show motive. And that he did in good faith start an investigation to deter-

1435 mine that fact, whether those statements were true or false, that is as far as I think I allowed them to go on that.

Mr. Thiess: Well, the point here is that they have characterized this operation of these 24 stills as dirty circulation.

The Court: Yes.

Mr. Thiess: And they have made a big point of the fact The Texas Company were operating dirty circulation. Now Mr. Behimer testified that as soon as they got a pump they installed the pump and then instead of returning this so-called reflux to the still, they sent it to the tube and that changed it into a clean circulation process. Now I am just asking this witness whether he agrees with it.

Mr. Reichmann: Let me interpose a suggestion right here, your Honor. What Mr. Dubbs testified to was they were not using the Behimer clean circulation process, and that in that installation, and

that is all, it doesn't make any difference how he characterized it, the pivotal point was that they were not using the clean circulation that he claimed
1436 to have found and reduced to practice in 1917. That is the pivotal point here.

The Court: The objection will be sustained.
644 I have referred to the suit of the Universal Oil Products Company against the Standard of
1437 Indiana in Kansas City, Missouri. That case was finally settled.

Q. In this testimony on page 1341 you say: "I was afraid that they would use the same tactics in the Behimer application." And then you were asked: "Now this experience that you had had, did that arise in more than one case?" And you said "Yes."

"Q. In what cases?"

A. The Warner-Quinlan case and the Standard Oil of Indiana."

A. That is correct.

1438 The Standard Oil of Indiana case I was referring to there was the case that was tried at Kansas City, Missouri. Offhand I do not recall anything about any litigation involving the Universal and the Standard of Indiana, and Texas instituted in Indiana, on the Dubbs 629 patent.

Q. Well, I would like to call your attention to a bill of complaint and an answer, Universal versus
1439 The Texas Company, and ask you whether you know whether those suits were instituted by Universal?

A. I do not recall them at this time. I may have known about it.

Q. Did you know that Universal was suing The Texas Company on the Dubbs 629 patent?

A. Well, I could not say offhand at this time. There were so many suits that I am not sure without looking it up.

Q. Well, could you determine it by looking at it a little more closely?

A. I do not believe so.

Mr. Thiess: I would like to offer in evidence this bill of complaint as DX 242 and this answer as DX 243.

1440 645 Mr. Reichmann: We object to that as incompetent, irrelevant and immaterial, not proper

cross-examination, having nothing to do with the issues in this case.

Mr. Von Holst: This shows that the Behimer defense was set up in the suits pending here, the prior invention by Behimer was set up by Texas in defense to a suit brought on the 629 patent against The Texas Company in Illinois.

1441 The Court: I think I shall admit this simply to show that certain suits were pending and the defenses were set up. That is all.

1443 Mr. Thiess: I also want to offer bill of complaint in the case of Universal Oil Products Company versus Standard of Indiana in the United States District Court of Indiana, as DX 244.

The Court: It may be admitted.

1444 Mr. Thiess: I also want to offer in evidence an amendment to the answer and the counter claim in that same suit, as DX 245-A and 245-B.

Mr. Reichmann: Now, let the record show also, if your Honor please, subject to our objection and for the limited purpose, that in the Universal Oil Products Company versus Texas Company, the bill of complaint which they have introduced and the answer, that the answer of The Texas Company was filed June 30th, 1927.

Mr. Neuman: And Mr. Behimer was hired in August, 1927.

The Court: All right.

Mr. Reichmann: And in the suit of the Universal Oil Products Company versus the Standard Oil Company an amendment to the answer of the Standard
1445 Oil of Indiana was filed July 12, 1927. And another amendment was filed previous to that, appar-
646 ently, in the same suit, May 16, 1927.

Now these are admitted subject to that limited application, your Honor.

The Court: Yes.

1446 After I learned of the dates alleged by Behimer and after the interference had been declared, I testified that I started certain men on the job of investigation, and I referred to a Mr. Howard. He was a man in our employ, an engineer, had done a great deal of investigation, also helped in the laboratories from time to time in research work. He was on the payroll of the Universal, not engaged on a retainer.

There was also a Mr. Olsen. Mr. Howard hired him at that time. Mr. Howard would charge up his expenses and salary paid to him to the Universal.
1447 Later on he became directly employed by the Universal. That occurred as near as I can tell, somewhere around '25. I don't think Mr. Olsen had been a prior employe of The Texas Company. I never heard of it. I am not sure about Mr. Olsen making a model of The Texas Company cracking plant for the Universal Oil Products Company. He made several models in relation to the suit of the Standard Oil Company versus Universal Oil Products Company. He made several other models. I do not at this moment recall one of The Texas Company. He may have. I would not say that he did not. When I put Mr. Howard and Mr. Olsen on this Behimer
1448 investigation I told them to get the facts in regard to these statements of these runs of 1918 that they made, and they could probably contact men that worked on it either in the present employ of
647 The Texas Company or that had been employed there, and find out from them what the facts were; and if they had any data they had made themselves to get a copy of it, but to be very careful not to lead them, I wanted the facts as they knew them and not as he wanted—would lead them. I did not tell them where to go to make this investigation. That was up to them. I did not limit the field of their investigation. I contacted them from
1449 time to time. They reported back to me from time to time that they were trying to establish contacts, they made some contacts and that from those contacts they obtained from some of them affidavits. Offhand I do not know who the men were that they contacted, or who the men were that gave affidavits to Mr. Howard and Mr. Olsen. I will look that up. I do not recall that during this investigation Mr. Howard and Mr. Olsen wrote me any letters respecting what
1450 was going on. I have not looked it up recently. The custom was at that time, in order to save time, it was either personal contact or telephone. There were some telegrams arranging appointments, I think. But I do not recall any letters at this time. I have
1451 not gone through the records of the Universal Oil Products on this phase of the case. I haven't done

1452 any work on that at all. I would say I have only spent all through, a day or two days in preparing myself to take the stand. In DX 178, which is interference 49355, I made the affidavit beginning on page 175 thereof.

1453 On page 176 of this affidavit, I state: "About this time I was informed of the names and addresses of certain parties whose names and addresses for obvious reasons I do not now disclose, who had an original knowledge of the work done by Holmes, Manley and Behimer in connection with an apparatus which I was led to believe was substantially identical with that disclosed in the Holmes-Manley-Behimer application involved in the above entitled interference."

648 I do not remember who gave me those names and addresses. One of them, I was looking for

1454 an engineer and happened to contact Crane's manager at St. Louis and he referred me to Mr. Fantz, but by that time Mr. Fantz was engaged, I think, with The Texas Company at their master mechanic, or with the Southern Pacific Railroad as master mechanic. I think he was first with the Southern Pacific Railroad at New Orleans, and then went with The Texas Company as master mechanic. Mr. Fantz is one of the names that were given to me. The other one, I do not know how I came in contact with him. I do not remember any other names that were given to me at that time, and who gave them

1455 to me. At this particular time I do not believe I had a list of names given to me by anybody. I state further in this affidavit on the same page: "I immediately got in touch with one of the employes of the Universal Oil Products Company who was experienced in making investigations and directed him to get in immediate touch with the persons aforesaid and endeavor to obtain information regarding the work which had been done by Holmes, Manley and Behimer."

This employe that I put on the job was Mr. Howard.

1456 DX 236A, B and C are the letters that passed between me and Mr. Howard respecting this transaction. I don't recall of any correspondence with Mr. Howard about this investigation, other than these three letters that are contained in this affi-

davit. There may have been others. It would not be natural that Mr. Howard would report to me as to what he was doing, in letter form, as he was doing here. The usual custom was either personal
1457 contact or by telephone. I will find out whether there are any further letters or not. These letters are dated July 3rd, 7th, 1925 and the telegram
649 the 9th of July, 1925. It seems to me that there was some activity before this on the investigation on what Behimer had done at The Texas Company. I couldn't say exactly what it was, but I believe there was some activity trying to find the facts out before this. The prior activities would consist of trying to find people who could give us the facts in the matter as to the actual work. Howard and Olsen would be on that job. I think Howard was active on this job prior to July 3rd, 1925. I am not positive of that. In this letter Howard is
1458 addressed in Washington, D. C. That was his residence. In these letters there is reference made to a party, Keith. Keith is a chemist. I don't recall whether he was then working for the Texas Company or not, but he had been with the Texas Company. Then he was with Cross, then he was with us. I think he was in our employ later. I am not sure about that without looking it up. That is my recollection. The St. Louis party that is referred to in these letters is Mr. Fantz. He was a former employe of The Texas Company. I think he was the engineer, master mechanic of The Texas Company. Mr. Fantz gave me information regarding the Behi-
1459 mer work. I don't know as he told me anything about Behimer's work, except that he was a very able man, a very reliable man. As to the work that Behimer actually did at Port Arthur on his experimental work, I think that the only thing that was discussed there was that Mr. Fantz made the jet pump for 11B or designed it. I think I discussed that pump with Mr. Fantz. I don't think Mr. Fantz provided me with any records of The Texas Company. I don't recall of any that he furnished me. I couldn't say positively that he didn't, but I don't recollect of any that he furnished.

1460 Now in this affidavit on page 179 I say: "On July 25, 1925"—and I will provide the name instead

of Mr. A—"Mr. Howard interviewed for the
650 first time one of the parties he was to look up and found that he had intimate knowledge of some of the operations which had been carried on
1461 by Holmes, Manley and Behiher, and thereupon immediately arranged with me and with him to have an interview, to have me interview the said party on July 28, 1925, and on that day I had an interview with said party and learned from him that Holmes-Manley-Behimer had used the liquid jets substantially as shown in their application involved in the above entitled interference, and that the same proved to be entirely unsuccessful, and that said party informed me that such liquid jet apparatus would not perform the work it was intended to do in said Holmes-Manley-Behimer application". The party that I interviewed that gave me that information would either be Mr. Fantz or Mr. Keith, but I am not sure at this time. I think it was Mr. Fantz. Mr. Fantz was in St. Louis. The paragraph in my affidavit prior to the part that I have just read is that "Howard spent two weeks in Texas and Louisiana endeavoring to obtain information regarding the
1462 work which had been done by Holmes, Manley and Behimer. This work did not progress as rapidly as it might otherwise have, because the information I had gotten and had imparted to Mr. Howard regarding the names and addresses of the two parties was to look up were found to be inaccurate, and then in July, Mr. Howard interviewed for the first time one of these parties." I still think that was Mr. Fantz. And I think Mr. Howard brought him to Chicago. I am not absolutely postive. My best recollection is that it would have been Mr. Fantz, because he had made the jets and said that at the time he advised them he didn't think it would work. As of July, 1925, I had this information that the jet pump would not work.

651 Q. Now having that knowledge that the jet pump would not work, if that was correct, you knew, did you not, that under those circumstances
1463 the Texas Company could not establish its early dates?

A. Oh, yes. You understand when I say the jet pump would not work, that I don't mean by that

that it wouldn't carry part of it back. It is rather a complicated operation. In order to make it work successfully in the plant or in the cracking plant, its inherent defects would very much interfere with the commercial operation. Now you can take a jet and use it for ejecting water out of an excavation or a flooded celler, or something like that.

Q. Well now according to this affidavit you were pretty well satisfied, were you not, that it was entirely unsuccessful, and that the liquid jet apparatus would not perform the work it was intended to do in the Holmes-Manley-Behimer application; you were satisfied as to that?

A. No, I wouldn't say that. I had understood that from Mr. Fantz and I believed that he knew what he was talking about and understood it. I was persuaded it was correct information from all that
1464 I knew. I was not familiar with the jet pump, and I hadn't any reason to doubt it. I do not doubt it today.

I have also referred to a man by the name of Kaufman. He was a prior employe of the Texas Company. He was put on this investigation on the statement of his own that he knew a lot of the men there and that he thought he could get the facts, and he was put on that to interview these men to see if he could get the facts. I put Mr. Kaufman on this job. I think in the summer or late summer or early fall of 1926.

1465 There were no instructions given him except to get the facts and if the men had any data themselves that they had made, to get a copy of it. I don't believe there was any limitation upon his activities, where he was to work, or what he was to do, except that he was to compensate them for their time within reason, meaning by that to pay them according to what they usually earned, and a reasonable amount over that.

652 Mr. Kaufman interviewed quite a few. I think he got some affidavits, I wouldn't remember from whom. I am not positive that he got them. I don't know of any way of identifying what ones that he secured, but I think he secured some. I will ascertain what affidavits he did obtain. Mr. Kaufman reported back to me; I had several interviews with

him. He did not communicate with me in writing that I recall.

1466 It is possible that he did, but I don't think so because the custom at that time was that pretty near invariably I communicated by phone or in person. Now the reason for that was that I was away from the office practically all the time. I would be in Chicago probably a day or two, then go to the Pacific Coast or to the Atlantic Coast, and so forth, and in handling those matters I couldn't carry on a correspondence; I had to have a conference there and settle it then, and that could only be done by either long distance phone or personal contact, and that was the usual custom. And consequently I don't believe there are any letters, or reports, but I will look that up.

Referring back to Mr. Fantz, I don't recall whether I obtained an affidavit or statement from him regard-

1467 ing this work by Behimer at The Texas Company. I will look that up.

I was fairly well acquainted with Mr. Wannack when we got toegther and I employed him for this work. When I first employed him in Chicago I told him that others had been working on this, and I told him who they were. I told him that Mr. Howard and Mr. Olsen were working on this and to work with them. And he did work with them. I have a recollection of furnishing Mr. Wannack a list of names that might possibly be able to furnish him with some information.

1468 During the time that Mr. Wannack was employed on this job he was in Chicago several times. I don't know how many times. Sometimes I would have him do some other work. When he came to Chicago I asked him how he was getting along and what his progress was. I inquired as to what he was doing.

1469 653 Q. And didn't he tell you what he was doing and the manner in which he was getting the information?

A. The substance of his report was that he was trying to establish contacts.

Q. And you never discussed with him in detail as to what he was doing down there or how he was hoping to get this information?

A. To the extent as to what the detail was, and so forth, then he said that he was establishing contacts; it took time to do that. One of the incidents, I think he mentioned about attending a school there that either the Gulf or The Texas Company were operating, with the idea of making contacts, to get information who to go to, that he could get this information.

Q. But nothing was said as to how he was actually working down there to get the information?

A. No, not anything of that nature. He said that he was working to make these contacts.

Q. He never discussed that at all. The only thing he discussed was the contacts he was making?

A. Yes.

1470 I don't remember Mr. Wannack's going to Jamestown, New York. He never mentioned that fact to me at that time. He did mention it to me in August, 1926, when I told him that he could no longer continue.

Q. What did he tell you then?

A. Well in describing—arranging to get these documents, the photostats of these documents, he told me in a boastful way about him getting the numbers of these keys and going to Jamestown and getting them, from Jamestown, and going back down there and giving them to one of the men in The Texas Company to get into the files.

654 Q. And you never had any intimation whatsoever before of his trying to go into the files of the Texas Company to get out duplicates of their papers?

A. Not that I have any recollection of. I am positive that was the first information that I got.

1471 Q. And when he told you that you were shocked, were you?

A. Very much so.

Q. And did you lose faith in him?

A. Completely.

Q. In his integrity, et cetera?

A. Well, I wouldn't say integrity; in his judgment, as to how far to go.

As the result of that I decided to ask for his resignation. But after that I did put him on some other jobs. He was on a job at Bayonne.

Mr. Wannack, when he was down in New York after August, went from New York to Beaumont. I don't recall Mr. Olsen going back with him.

I don't remember his meeting Mr. Kaufman in Beaumont.

1472 He may have met Mr. Kaufman down there. Mr. Kaufman was active. I have no recollection that Mr. Kaufman communicated with Mr. Wannack in New York and asked both Wannack and Olsen to come to Port Arthur immediately, that they could get the necessary documents and information at that time. While Mr. Wannack was on this job I don't recall getting any letters or any reports from him of any kind. I remember getting some telegrams
1473 from him, signed either Cal or Wannack. I will see whether I can find those telegrams.

I think that there were several times that we communicated by phone. I don't know as I would say so awful frequently. When he communicated with me by phone he told me what he was doing down there at Port Arthur. The sum and substance was that he either wanted money or that he was establishing contacts. He didn't go into detail as to how he was establishing these contacts that I recall.

1474 655 Wannack's procurement of funds, I think, was always done by phone or wire. There may have been some correspondence, I don't know.

Q. Now was there ever any doubt in your mind after Wannack was put on this job by you that he was one of the employes of the Universal Oil Products Company?

A. Well I hardly know how to answer that. I employed him. He worked under me and was paid out of funds from the Universal.

Q. Well, did you consider him an employe of the Universal Oil Products Company?

Mr. Haight: We object to that. That calls for a legal conclusion, if your Honor please. He has given the facts, and from the facts we can draw the legal deduction.

The Court: Yes. What he thinks about it is of no value.

Mr. Thiess: Q. Did you tell him that he was working for the Universal Oil Products?

A. I don't recall discussing that matter.

1475 Q. While Mr. Wannack was in Port Arthur, as I understand your testimony, there were some papers, photostats of run sheets and drawings, sent up that you say Mr. Wannack boasted to you about how he got them; do you remember that?

A. Yes.

Q. Now when you got those drawings, and he told you how he had obtained them, did you at any time communicate with The Texas Company and tell them that those drawings had been gotten in this sort of way, and send them back to them?

A. No.

Q. You kept the drawings, did you.

A. Yes, you understand I am speaking of my knowledge. What the company did I don't know.

1476 656 Q. Now do you know of any other documents that were obtained from the files of The Texas Company by Mr. Wannack, besides these documents that you have referred to that were obtained?

1477 A. No other one, except prior to that there was a blue print of a jet pump that was sent out, that I understood Brunow got from a mechanic that had that copied at that time.

Q. And who sent you this drawing of this pump?

A. I think it was Mr. Wannack.

Q. And did he tell you that he got this drawing from Mr. Brunow?

A. That is my recollection. I understood in my talk with him that he got that drawing in the manner I have indicated. I am not positive about that now whether it was from Brunow or somebody else. My impression is it was from Brunow.

Q. I refer you to the drawing in the Behimer affidavit made for the Universal Oil Products Company. on page 43C, and ask you whether that is the drawing that you are referring to?

1478 A. It is very similar, as I see it here. I guess that was the drawing as near as I can tell at this time. If it wasn't it, why it was practically the same thing. It was dated 1926. And I think it had "Texas Company" stamped on it the same as this drawing that I 1479 am referring to. I am pretty sure that that drawing was obtained and sent to me prior to the time that this other material that we have referred to was gotten through Mr. White and sent in.

1508 657 I don't remember whether this drawing was sent on or if Wannack gave it to me at one of our meetings, but my recollection is that he got it from one of the workmen that had it. Now, whether he got it through Brunow or not I could not tell. At the time I was down in Beaumont and had this meeting with Brunow and Wannack and Beyt, I knew that Beyt was in the employ of The Texas Company, but my recollection is that Brunow was not, that he was
1509 an ex-employee. That was my understanding at the time I met him in Beaumont, and that understanding was never changed. In other words, it was my understanding all the time that Mr. Wannack was contacting Brunow that he was not in the employ of The Texas Company. I don't recall that I ever discussed that with Mr. Wannack. I think I got to Beaumont in the afternoon and Brunow was there in the afternoon of the day. I went down to Beaumont to meet Mr. Beyt. Mr. Brunow was there at the meeting in the evening. I met him for a few minutes in the afternoon, and then he was there at the meeting in the evening.

I understood that Mr. Brunow's function was to
1510 help Mr. Wannack contact men who knew about the operation and that he himself did not know much of anything, and I have no recollection of discussing anything with Brunow at that meeting. I don't remember of him saying anything. He may have but I don't recall it because my contact was with Beyt. My recollection is at that time that Mr. Brunow was an ex-employee of The Texas Company. I know that Mr. Brunow was put on a salary by Mr. Wannack of two hundred dollars a month. My recollection is that he was on a salary at that time. I would not say that I did not know at that time that he was also drawing a
1511 salary from The Texas Company. My recollection is that he was not, that he was an ex-employee. I may be wrong about that. I may have known of it at that time but I have no recollection now. My impression is that he was not.

658 I remember that at that time or some time shortly after that Mr. Brunow executed an affidavit. I had nothing to do with the preparation of that affidavit. I assume Mr. Wannack prepared it.

Q. Mr. Dubbs, do you remember seeing this affi-

1512 davit at about the time it was executed, the 11th of March, 1926?

A. I must have seen it.

Q. It was undoubtedly sent in to you, was it not?

A. Yes, I must have seen it.

Q. And I would like to call your attention to the third paragraph on page 2 of that affidavit and ask you whether that refreshes your recollection, your knowledge that Mr. Brunow was in the employ of The Texas Company at that time?

A. This would indicate that he was but that is not my present recollection that I knew that at the time.

Q. At the time that you saw this affidavit you, of course, then knew that he was in the employ of The Texas Company?

A. Yes, I knew the affidavit stated it. And on or about that time the Universal was paying Brunow two
1513 hundred dollars a month. I think that two hundred dollars was paid up to the time or shortly after Mr. Wannack was taken off of the work. I understood that Mr. Wannack owed him some balance or something. My mind is not clear on the exact situation.

Q. I wish you would look at this affidavit again, this Defendant's Exhibit 212, and tell me whether you know who drew that affidavit?

A. I have no recollection of it now.

Q. You don't recognize anything you may have contributed to that affidavit?

A. I will have to read it through.

659 The Court: Let the witness read it through this evening.

Mr. Thiess: All right.

I have no recollection of talking to Mr. Brunow at any subsequent time after this meeting at Beaumont. I have not any recollection of talking to him over the telephone.

1514 I have no recollection of asking him to call me; if he could not get in touch with Mr. Wannack that he call me on the long distance telephone. I would not say it was not so.

I met Mr. Beyt for the first time in Beaumont at the meeting at which Wannack, I and Beyt were present. I did not meet him again until I met him in Chicago. When I met him in Chicago he came there, as I understand, because of a conversation he had had

with Mr. Murray asking him to come to Chicago. I have not a clear recollection of just how that was, but I think I did authorize Mr. Murray to contact Mr. Beyt and suggest his coming to Chicago to see me.

1515 I don't think Mr. Murray would have asked Mr. Beyt to come to Chicago unless I so authorized him, but the only thing that passed through my mind, it may have been some time before that that I had mentioned it to Mr. Murray and that Mr. Murray inferred from that that I would be desirous of employing Mr. Beyt, but after employing Mr. Behimer I was not particular about it when he did come up I did employ him because I thought that he would be of great assistance to Mr. Behimer. I could not say whether I asked Mr. Murray to do that before or after I had hired Mr. Behimer. I don't believe the employment of Mr. Beyt was ever discussed between myself and Mr. Behimer unless it was discussed after Mr. Beyt came here. I don't think it was discussed before. I

1516 think the employment of Mr. Beyt was never mentioned between me and Mr. Beyt except at the Beaumont meeting and then again in Chicago when he met me.

660 Q. Now, regarding Mr. Behimer and the work that he did, when he became affiliated with the Universal Oil Products Company you say that he was put on research work for the purpose of developing new ideas and making inventions, is that correct?

A. In a sense it is correct, but after discussing it with him he himself elected to do the ground work laying the foundation to work on the anti-knock gasolines, and that meant to do original research work out of which we hoped, and which did result in many valuable patents, but that meant that Mr. Behimer done that ground work and from that ground work others developed the different processes.

Mr. Behimer filed some patent applications. I think

1517 very few. But on the work that he did others carried it on and there were many applications filed.

Q. And when you engaged Mr. Behimer the purpose, of course, was to get him, as I understood your direct examination, to get somebody that would develop new ideas, as you said inventors are born, not made, that's correct, is it not?

A. No, that is not correct.

Q. Well, what was the purport of your testimony?

A. Mr. Behimer was employed for two things, to furnish us with the correct facts about his invention at The Texas Company and the other thing was that he was a man that had evidently made enormously valuable contributions to the art, whether he was first or not matters not. You must get this picture, as you probably well know that there was thousands of men working on this problem, millions of dollars being spent on it, and the only ones that solved it were Mr. Behimer and myself and the whole world has benefited by that result. Now, whether he could make another contribution of that magnitude

1518 661 remains to be seen. As a matter of fact it is seldom that men that make one large contribution to the arts repeat it with others. I considered what he had done at The Texas Company one of the most outstanding contributions that were made.

Q. Now, this experimental work that Behimer did at The Texas Company, you did not believe at the time was of any real value, did you?

A. I certainly did.

Q. As I understood you you thought it was not operative?

A. I am talking about the principle involved. I did not think the jet pump could be used successfully in a commercial operation of the principle involved, no question about it.

Q. And the jet pump was merely an incident?

A. Well, I would not say that.

Q. Anybody could supply a pump, was that your idea?

A. I cannot discuss with you the legal parts of an invention.

1519 Q. I am not asking you from a legal standpoint, I am asking you from a practical standpoint.

A. "Anybody" covering everybody, I would say no.

1529 662 Q. At the session yesterday, Mr. Dubbs, I asked you whether you would look up and see whether there were certain documents available and the first thing I asked you about was about any affidavit Mr. Howard may have obtained. Did you look that up?

A. I have.

1530 Q. Do you know who the men were that gave affidavits to Mr. Howard, Mr. Dubbs?

Mr. Reichmann: We object to that. It is wholly immaterial who they were. There is no foundation for that inquiry to be made at all. What difference does it make who they were? That's again another fishing expedition with no foundation whatever laid for it.

The Court: Tell me how it is material. I don't see just now.

Mr. Thiess: The situation here is that Mr. Dubbs said he started this investigation and he put Mr. Howard and Mr. Olsen on this investigation, and that was the start of this investigation, to find out what Behimer had done. Later on he put Mr. Wannack on. Now, the proposition is what had Mr. Dubbs learned about this, and who were the men that were on this job, and how much activity had there been on this job before Mr. Wannack was ever employed.

1531 The Court: Well, I don't see that that is—you are charging here improper conduct. That's the purport of your testimony, what Mr. Wannack and what the others did that were working with him.

Mr. Thiess: Well, we don't know.

The Court: And that's the only thing you have shown on direct, and it is only as to those matters you can cross-examine.

Mr. Von Holst: On direct he said there was a previous investigation.

1531 663 The Court: Yes. That was merely incidental.

Mr. Von Holst: Your Honor, we have a right to explore. Here is what he said on direct examination.

Mr. Reichmann: That's all you are doing, just exploring.

The Court: No. Now, it does not make any difference what was done before. It may be that he was asked questions to which an objection would have been sustained, if the objection was made, but a party cannot be permitted examination on immaterial matters,—questions asked and answered on immaterial

1532 matters for the purpose thereafter of cross-examination on immaterial matter.

Mr. Von Holst: The question put was, Mr. Thiess asked him whether he had started this investigation

in 1925. He stated in answer to that question, or his counsel did, I think this was on direct, he said it, I think, was before that time.

The Court: What difference does it make?

Mr. Von Holst: There may have been other things.

The Court: Now, there are pleadings here that usually, as I understand set out the things that you prove. You proved on direct examination certain things. Now, that is all that I am concerned with, not other matters. There may have been misconduct at other times but that has nothing to do with this case.

Mr. Von Holst: I submit, your Honor, that on the inquiry into unclean hands that does not apply. This Court of Appeals has said that the defense of unclean hands does not need to be pleaded, that it is not a defense, that it may come up at any time, that the Court should inquire into it at any time, and into all phases of it. Now, we were ruled to answer here, that is true, which we did to the best of our knowledge, but
1533 if at this hearing other transactions should appear from which the Court might draw the conclusion that unclean hands applies it should be inquired into.

1533 664 The Court: I don't think I will permit you to go into that, except on matters that were put in on direct examination. This hearing might string out forever.

Mr. Reichmann: Absolutely.

Mr. Thiess: Q. Now, I asked you on page 1456 and 1457 of the record whether there were any letters between you and Mr. Howard regarding these transactions. Did you look that up?

A. I did.

Q. Are there any such letters?

Mr. Haight: Wait a minute. We object to that, if your Honor please, on the same ground as the other.

The Court: The objection will be sustained on the same ground.

Mr. Thiess: Q. Now, on page 1465 I asked you whether there were any affidavits obtained by Mr. Kaufman. You said you would look that up. Did you look that up?

Mr. Reichmann: We object to that again, if your Honor please, on the same ground.

1534 The Court: He may answer it.

A. I did.

Mr. Thiess: Q. And are there any such affidavits?

Mr. Haight: We object to that.

The Court: The objection will be sustained on the same ground.

Mr. Thiess: Q. Now, on page 1466 I asked you whether Kaufman had made any reports to you with respect to this investigation. Did you look that up?

A. I did.

Mr. Haight: We object on the same ground.

The Court: Objection sustained.

Q. Are there any such reports?

Mr. Haight: We object on the same ground.

The Court: Objection sustained.

Mr. Thiess: Q. Now, on pages 1466 and 1467 I asked you whether there were any affidavits by Mr. Fantz. Did you look that up?

A. I did.

Q. Are there any such affidavits?

Mr. Thiess: Q. Now, on page 1473 I asked you whether there were any telegrams from Mr. Wannack to you. Did you look that up?

A. I did.

1535 665 Q. Are there any such telegrams?

A. Yes.

Q. Will you produce them, please?

1536 The Witness: (Handing documents to Mr. Thiess.) I am not handing you these voluntarily. I am handing them under the order of the Court.

Mr. Thiess: Q. I notice that all of these telegrams are signed Cal.

A. Yes.

Q. And I understand investigation was directed to telegrams signed by Cal, and you are going to investigate to find any other telegrams that might be signed by Mr. Wannack?

A. That is correct.

1537 Mr. Thiess: If your Honor please, I would like to offer these telegrams in evidence as DX 246, consisting of sixteen telegrams.

1544 666 Undoubtedly all these telegrams in some way or another came to my attention very shortly after the time they were received.

Q. Now on page 1474 I asked you about any correspondence regarding funds which you might have had with Mr. Wannack. Did you look that up?

A. I did.

1545 Q. Have you got any such correspondence, did you find any?

A. Yes. I have.

Q. Will you produce them?

1546 A. (Producing documents.) I don't produce them voluntarily.

1547 Mr. Thiess: I offer in evidence the correspondence just produced by the witness as DX 247, consisting of seven papers.

1552 We were discussing yesterday this Brunow affidavit. I was going to look into that and see whether I had anything to do with the preparation of that affidavit. I have done so. I am positive I did not have anything to do with the preparation of the affidavit.

1553 Q. On these vouchers, DX 234, which were furnished by plaintiff, and I understand from your testimony you say the greater part of these are O. K.; you O. K.'d them as they came along?

A. Yes, I think that is correct.

Q. I refer you to one dated 9-15-25, and particularly to the last item on that referring to professional services two hundred dollars. Do you know what those professional services were for?

1553 667 A. I don't believe that I could recall at this time what they were for. We may have engaged an attorney.

1554 Q. At the time that you O. K.'d this voucher did you ask Mr. Wannack what these professional services were for?

A. If he was there I probably did, if he was not there why of course I did not. I may have asked him some later time.

Q. Items of that kind appearing in these vouchers, didn't you inquire from Mr. Wannack what the money was spent for?

A. I think at the time, yes, that I went over it in general.

Q. And discussed what he was doing and how he was spending that money?

A. In general, yes.

1555 Q. Now, on the paper numbered 29606 there is an item "Photo print $14." Do you know what that was for?

A. I could not tell you at this time what it was for.

Q. Now, there is a similar item as to photographing on the document entitled "Beaumont Texas 7-12-26" reading "Beaumont Finishing Company holding crew three nights $10." Do you know what that was for?

A. No, I don't recall at this time. I may have discussed that with Mr. Wannack. I don't remember at this time.

Q. Now on this document in the same exhibit, "Please credit the following to special account 7-28-26," and there is an item "Photographer $40." Do you know what that item was for?

Mr. Reichmann: Does it bear his O. K.?

Mr. Thiess: He says he has O. K.'d all of them.

A. No, no, this is O. K.'d by J. G. A.

1556 Q. Who is that?

A. I assume it is Mr. Alther. I don't recall that at this time.

668 Q. You don't remember discussing this photographing and photostating work with Mr. Wannack?

A. I remember discussing the photostatic copies that came up there as I explained.

Q. Do you remember discussing the items as they came through?

A. No, I don't remember discussing that. This may have come through afterwards.

Q. Well, this is dated 7-28-26, is it not?

A. Yes, but that covers the date it was made out, does it not? I would think that would cover the date it was made out, I am not sure.

Q. Well, 7-28-26 was prior to the time that this thing was all disclosed?

A. I said it may have been.

1587 669 I do not recall that I discussed any of these items on DX 234 with Mr. Wannack at all. I could not say positively that I did not, but I have no

recollection of it. I know that some time after Mr. Wannack resigned he was ill and went to a sani-
1588 tarium. I know from hearsay the reason why he went. I knew that from hearsay at the time when he went to the sanitarium from the doctor that was consulted at the time. I did not visit Mr. Wannack at the sanitarium at all. He was first down to the sanitarium near Jacksonville, Illinois, and he begged me several times and others to arrange for a transfer up to an
1589 institution at Wauwatosa, Wisconsin. And finally he was transferred there. While, as I understand it, up there he had freedom to come and go as he wanted and frequently as I would go home in the evening why I would find him sitting at my doorstep, and he could become very bitter against Mr. Goldberg who was his outstanding benefactor in taking care of him.

At the time that I asked for Mr. Wannack's resignation, I did not have any information of anything of this kind, except at that time, I noticed that he acted kind of erratic in a way, at times excitable, but I hadn't any information that there was anything particularly the matter with him. I lost faith with him on the poor judgment he used.

Q. Under the circumstances at the time that you asked for his resignation, did you consider him trustworthy?

1590 A. It is a very difficult question to answer, such a broad term. I would say I considered him trustworthy, but at the same time I was shaken as to his judgment to keep within reasonable bounds.

Q. After he had disclosed to you that he had gotten these and gone into the files, all the other acts that he did in and around Port Arthur, did you tell him that you did not consider that an honest man would do anything of that kind; did you admonish him in that sort of a way when you asked for his resignation?

670 A. I do not believe that I told him he was guilty of dishonest acts as to that extent. My recollection is that he expressed great regret, wanted to continue and assured me that nothing like that would happen further. I do not think that I said he was dishonest or anything like that. I said he had gone too far and he should not have done it and he had destroyed his usefulness to us.

1591 Q. And did you still believe that Mr. Wannack was perfectly trustworthy and honest, that he could be used by somebody else on a proper kind of work?

A. Well, Mr. Thiess, after he became sick to now ask me to go back and mentally separate my thoughts without introducing what I subsequently learned, it 1592 would be very difficult. I would say that I thought that he could be very useful, that his judgment was in error, he had gone through this experience, and he would not commit it again. Now I will say after learning of his illness, that he was entirely unreliable. I learned of his illness, prior to the time that he went down to Jacksonville. I think his wife 'phoned me.

Q. Now I would like to show you a paper (DX 248) and ask you whether you recognize that document?

1593 I recognize that document. That is my signature 1594 on that affidavit, but my mind is not clear of the instance of issuing it or the sum and substance of it.

I don't think I have seen that affidavit from the time that I signed it down to the present time. I do not recall the circumstances under which that affidavit 1595 was executed or the purpose at the present time.

DX 248 reads:

1596 671 "Affidavit

State of Illinois, } ss.
County of Cook. }

Carbon P. Dubbs, being first duly sworn, deposes and says that he is a citizen of the United States and a resident of Wilmette, Illinois; that he has known Carl Otto Wannack intimately for approximately twenty-two years; that during said period deponent has always found Carl Otto Wannack to be trustworthy, industrious and possessed of constructive ability; that Carl Otto Wannack has acted as consulting and construction engineer in research, maintenance and installation work in connection with the oil industry; that Carl Otto Wannack has always been self-supporting and has always been employed in constructive work.

Affiant further states that Carl Otto Wannack is

possessed of high technical attainment; that deponent has recommended Carl Otto Wannack as being capable of holding responsible positions; that Carl
1597 Otto Wannack has always justified deponent's recommendations and has demonstrated himself to be temperate, reliable and worthy of confidence, and that Carl Otto Wannack has always respected the laws and customs of the People of the United States and has adopted them as his standard of conduct.

Further affiant saith not.

(Signed) C. P. Dubbs.

Sworn to and subscribed before me this 2nd day of December, 1931, at Chicago, Illinois.

(Signed) James T. Culliman,
(Notary's Seal) *Notary Public.*"

672 *Redirect Examination by Mr. Reichmann.*

1598 Before Wannack went back to Germany he told me he thought he could get better medical treatment there and also his aged father had written him and wanted
1599 to see him. That was in 1931. I understood that he was only going to visit Germany and come back to this country again.

1600 As Mr. Reichmann mentions it now, my recollection is that the affidavit for Wannack was executed and delivered to him before he went away for the purpose of enabling him to come back to the United States. It is my understanding that Mr. Goldberg of the Hump Hairpin Company paid Wannack's hospital bills at Jacksonville and Wauwatosa. He was associated with Mr. Goldberg at that time in connection with the gas machine.

673 *Recross Examination by Mr. Thiess.*

1601 While Mr. Wannack was in Germany, at rare intervals he would write over and want some data on something, would ask me if I would get it. I was just trying to recall an illustration. I think probably there were three or four cases that he made the requests for information. I always knew that he was
1602 alive through that, and then his communications with other acquaintances here that I knew.

Mr. Reichmann: By the way, Mr. Thiess, may I ask you, you just got this affidavit from Mr. Wannack since he returned here?

Mr. Thiess: Mr. Wannack showed me that in Germany.

Mr. Haight: Let me ask you one more question, Mr. Thiess, and don't answer if you don't want to. Wannack showed it to you as a means for getting back into this country?

1603 Mr. Thiess: If you want me to answer that I can. This is what Mr. Wannack told me: Mr. Wannack told me that there were only a few people, three of them, in the Universal Oil Products Company that knew that he was on their payroll and he would have to show that he was working here, and for that reason he went to Mr. Dubbs and asked for an affidavit; and if you want me to, I can show you a letter that he wrote contemporaneously to Lincoln Clark in which he made that statement, said that he was going to get from Mr. Dubbs the sort of an affidavit so that if he wanted to he could return to this country.

Mr. Reichmann: All right.

674 *Re-redirect Examination by Mr. Reichmann.*

1618 During the intermission today I refreshed my memory as to the circumstances under which my affidavit (DX 248) was made and concerning which I have been interrogated. I consulted counsel in this case and also Lee Gary because the affidavit was signed in his 1619 office. This refreshed my memory because he had the original letter from Wannack you now show me. On that letter I recognize Wannack's handwriting. Wannack's letter (PX 13) is as follows:

1620 "Sept. 16th, 1931.

Dear Walter:

I do want to thank you for letter and enclosure of money, seeing you here would not be a pleasure only, but it would help me in more ways than one.

I intend of leaving here on Sept. 26th for parts unknown, so far, for the reason that I will get the last, or the eight, Try-Archa-Mine injection on Friday and only two more of liquid Mercury injections the following weeks. I intended of taking the complete cure

in Germany, my father is 86 years old, I like to see him, before stepping of into the unknown, he has saved the cost of transportation for me and I could secure, not at his town, but at Berlin, where all Amerikan Doctors go, to become Specialist, a complete recovery. The Drs. here told me yesterday that from 4-6 months, before I am well. Money, an unknown factor, living in debt so much now, I consider the move of going, wise, on account of the cost here, and not having any more income, to resort to. Could I, or have you, sales of Hairpins in Germany? I can discuss that end when I see you.

Walter, will you kindly call C. P. at Wilmette and ask him to come up with you, I be so glad to see you both. This last year has been hell from the day I left Chicago, to now.

675 I have to have, before securing Reentry pass, 2 witnesses to verify, that I have not been absent from the shores of the U. S. A. during the last 10 or 15 years. C. P. and Lee Gary could do so, before an Immigration officer at the Chicago Post office then I can get 12 Months time before I would have to return.

Dear Walter will you really come, I can hardly believe it, you make an effort, to come and bring C. P. along.

Thanking you again, I am yours,

Always sincerely,

Otto.

P. S. C. P. has a 16 cylr. Cadillac, some car you enjoy writing in it, up here.

o."

1620 The "Dear Walter" to whom this letter was addressed was Walter Hermsdorf who was associated with Goldberg and worked with Wannack in perfecting the gas machine. It was in response to this letter that my affidavit was prepared in Gary's office and I signed it there for the purpose of enabling Wannack to get back to the United States.

I have not had possession of this letter at all since the time I saw it in Lee Gary's office. The "C. P." referred to in this letter is I.

676 *Re-recross Examination by Mr. Thiess.*

1622 I looked up any other correspondence with Wannack and I have the correspondence. I now produce it.

Q. Mr. Dubbs, there are certain letters like this letter of September 11, 1925, which you have produced which have no salutation and no signature. Are those letters you wrote to Mr. Wannack?

A. That I could not say. They were found in his file and so I put them in anyhow. I am presuming I wrote those but I could not say. I noticed that myself, but they were in the file. Whether they had been placed in there in error or not I don't know. I could not say they were letters written to Mr. Wannack.

1623 In addition to those that have no salutation and no signature, there are a number of those telegrams that are addressed to Egeler and telegrams signed Egeler. That was Mrs. Egeler my secretary.

I cannot say positively that I saw those telegrams at the time or shortly thereafter. For instance, the one I am looking at dated January 2, 1926, addressed

1624 to Otto Wannack: "Leaving Chicago Monday noon for New Orleans, Stop in Roosevelt and expect to see party there Tuesday or Wednesday. Egeler."

I would judge that was referring to me. What I had in mind, I think there was some telegrams sent when I was not there about sending money and so on. If I was out of the city and they sent him any money it was approved by somebody else. In these telegrams that are signed Egeler, such as I have just read, where the telegram says, I am going to be down at a certain place, and signed Egeler, that was signed

1625 by Mrs. Egeler on my behalf. Here is one merely signed E. Telegram of April the first to Otto Wannack which reads: "Do not leave until you feel sure matters are in such shape that leaving will not interfere in any way Stop When you are ready to leave wire me and I will advise you where I want you to meet me as it is impossible to tell now just where I shall be Stop Good luck and best wishes." That must be the same.

1625 677 There are a number of other ones here signed the same way. The first letter that appears here under date of June 22, 1925 that purports to be signed

Otto Wannack, addressed to me, is the application for employment by Wannack that I referred to in my testimony.

1626 The letter dated 11-17-25 addressed "Dear Sir," is Mr. Wannack's handwriting. I received that letter. And here is another longhand letter dated 12-8-25 addressed "Dear Sir," signed "Sincerely yours." That is Otto Wannack's handwriting.

Mr. Thiess: I now offer in evidence the correspondence produced by the witness as DX 249 consisting of thirty-nine pages.

678 ROBERT J. DUNHAM, SR.:

Direct Examination by Mr. Reichmann.

1479 I was connected with the Universal Oil Products Company from its inception until January 31, 1931. I occupied the office of Vice-President and in 1926, the title was changed to Executive Vice-President. I resigned in January, 1931, and retired from active business. I was one of the stockholders of the Universal Oil Products Company and together with all other stockholders sold out my stock at that time. I have had no financial interest in Universal since that time nor any connection in any way, shape or form.

1481 Governor Horner appointed me a member of the Illinois Emergency Relief Commission in September or October, 1933, and I was elected chairman and served as chairman for about twenty months. In May, 1934, I was appointed a member and one of the commissioners of the Chicago Park District in charge of the parks and boulevards of Chicago, and as one of the commissioners was elected president, which I am now. I retired from the relief work in the spring of 1935.

1482 I took a position as Administrator of Works Progress in the State of Illinois under appointment from the Federal Government. I have drawn no salary at all in connection with the relief work and as President of the Park Board or member of the Park Board. As Works Progress Administrator I received a salary of $6000 a year.

I recall the fact of the Dubbs-Behimer interference

in 1923. I knew nothing about the technical op-
679 erations of cracking processes or treating of hydrocarbons, and nothing technically about patents. My work was more in connection with the business management, rather than the technical operation of the Dubbs units, or the various patent litigations.

1483 I knew that Dubbs had been asked to develop the facts with relation to this interference. I was advised of what work he was doing, only to the extent that it might involve disbursement of money or something of that kind on his authorization. I knew of the name Wannack as the one who was working in the matter of investigation and I knew of moneys that were paid to him as Mr. Dubbs authorized. I did not know anything about the kind or character of the work that Wannack was doing. During my connection with the company I did not learn that Wannack had made efforts to buy, and through employees of The Texas Company to get into the files of The Texas Company for the purposes of having photostatic or photographic copies made of these files.

1484 I recall the circumstance of my getting this telegram, DX 228, under the date of July 20, 1927, from C. P. Dubbs to R. J. Dunham. It bears my initial. My recollection is that upon receipt of this telegram I either transmitted it by wire or telephone to Halle in New York. My recollection is that Reichmann also was there at that time and that he or Halle telephoned me suggesting that I do not answer it; that Reichmann was communicating with Dubbs; and suggesting that he return either to Chicago or New York for a conference.

1485 680 I recall that there was a conference held in Chicago a relatively short time after the receipt of this telegram, attended by Halle, Dubbs, Reichmann and myself.

Before the receipt of this telegram I knew that efforts were to be made by Dubbs looking to the employment of Behimer and that there had been some discussion of that matter between Halle, Dubbs and me. There had also been some discussion as to the purposes for which he was to be employed if that were possible.

1486 After twelve years it would be very difficult to say

where or when or who was present and exactly what they said at these conferences which took place before the receipt of this telegram.

1487 My recollection is that the conference that was held here at Chicago was within a few days or a week with reference to this date of July 20th. I think it was just long enough to permit Dubbs to come up from Texas. At this conference Dubbs represented to Halle and Reichmann—I was a listener—the value of Behimer to the Universal Oil Products Company in his knowledge of facts leading up to this interference, plus the value to Universal in obtaining Behimer's service as an expert in the cracking art. Dubbs was urging that we meet whatever terms were necessary to effectuate Behimer's employment.

1488 As a result of the discussion between the four of us, Dubbs was told that he would not be authorized to go beyond an attempt to obtain Behimer's services on the basis of an annual salary of $15,000 plus
681 $5,000 a year bonus. Dubbs indicated in his telegram that it might be necessary that Behimer be paid a cash bonus of $25,000 at the time of his employment. Dubbs was authorized to go back and continue negotiations with Behimer. Dubbs also represented at that meeting that Behimer wished, or was willing, to leave the employ of The Texas Company. I subsequently saw the contract between Behimer and Universal.

1489 After Behimer had been in our employ for a certain period he was to have the option of drawing $5000 bonus annually as provided in the contract, or he was to have the option of calling for it in a lump sum, in which event he was to give a series of notes of $5000 each payable on those dates that the bonus otherwise would be due him, and if he remained in our employ through the five year period, the notes would be cancelled, while if he, of his own volition, left the employ of the company within that five year period the notes were to become a lien upon Behimer or his estate or upon his property. I have not seen that contract or looked at it for ten years, and that is my best recollection of the arrangement that was contemplated and that went into effect.

682 *Cross-Examination by Mr. Von Holst.*

1490 This wire, DX 228, that Mr. Dubbs sent to me, marked confidential, was the occasion of Mr. Dubbs being called back to Chicago for this conference.

I think that Mr. Reichmann or Mr. Halle advised me over the telephone that it would be unnecessary for me to respond to Mr. Dubbs' wire; that Mr. Reichmann had sent a wire to Mr. Dubbs and they read me a copy of it over the telephone.

When Mr. Dubbs came back in response to this wire we were in disagreement, first, over the amount
1491 of the bonus and then how it should be paid.

When Mr. Dubbs went down in July the first time, I think he had met with me or other officials of the Universal to find out what he was empowered to offer Behimer.

I recall that Mr. Dubbs, was authorized to negotiate on a certain basis.

That was not put up to the Board of Directors of the company.

The amount involved was $225,000 over a ten-year period.

Q. And a matter of that magnitude was not put up to the Board of Directors of the company?

A. Well, you see the officers,—this was, the Universal was sort of a family concern, the officers and attorneys were the directors.

Q. Well then, how many got together in this meet-
1492 ing in which Mr. Dubbs was empowered to go down and negotiate on that basis?

A. I could not say. I imagine perhaps Mr. Halle, Mr. Reichmann, Mr. Belknap and myself. We constituted easily a majority of the directors.

1492 683 I don't remember whether Mr. Reichmann and Mr. Belknap were directors of the company at that particular time, but they were, to all intents and purposes they were directors because they were partners. They had their contingent interests in the results of the company, and Mr. Halle and I as stockholders always treated them as if they were stockholders and directors.

Q. So what was exactly the authority given to Mr. Dubbs by you people prior to his first trip down there?

A. My recollection is that the authority was to attempt to obtain Mr. Behimer and not to exceed a salary of $15,000 a year, plus a bonus of $5,000 a year, payable annually for the first five years; then I think that was increased to $10,000 bonus annually for the second five years.

Q. In other words, he was authorized to sign up a ten-year contract, is that so?

A. Well, I wouldn't say he was authorized to
1493 sign a contract. I think he was authorized to negotiate and bring those negotiations to a conclusion.

Q. But he was authorized to negotiate upon that basis, is that correct, a ten-year contract on the terms you have stated?

A. Yes.

Q. Now in the instructions given to him when he first went down there was anything said about commuting the bonus so he could get the $25,000 within sixty days or a definite period after he went with the company?

A. I do not think there was. I do not think it was anticipated that Mr. Behimer would have any reason for wishing any lump sum. I don't think we
1493 684 knew enough about Mr. Behimer or Mr. Behimer's circumstances.

Q. Hadn't Mr. Dubbs suggested to you in any way that Mr. Behimer's father had had something to say about that and thought that a certain amount would have to be made readily availavle to Mr. Behimer if he came?

A. I think he did. I think perhaps he intimated in his conversation with Mr. Behimer's father that Mr. Behimer might expect that.

1494 Q. So it was not altogether out of the picture when Mr. Dubbs went down the first time?

A. Well, I think Mr. Halle, I know I did, sort of felt that Mr. Behimer's father was more or less on a fishing expedition to see how much he could get for his son, but that didn't necessarily impress me with the fact that when it came time for the son to say yes or no that the son would insist on that provision.

Q. But it was contemplated that that question might be raised because of the communication had with Mr. Behimer, Sr., is that right?

A. Yes. I don't know that we had had an oppor-

tunity to discuss in detail with Mr. Dubbs his conversation with Mr. Behimer, Sr.

Q. Now Mr. Dunham, referring you again to this wire that C. P. Dubbs sent to you, you are familiar with the contents of that, you read it just now?

A. Yes.

1495 Q. In this wire, Mr. Dunham, Mr. Dubbs says: "It may be very necessary to pay the twenty-five thousand bonus in spot cash." Now, if I understand it he says the $25,000 bonus because that amount
1495 685 had been agreed upon as the amount which he was authorized to give in the way of a bonus, is that right?

A. Over five years, yes.

Q. Now then, he says here, in spot cash, and any delay would be very serious. Now do you recall why a matter of delay would be serious?

A. No.

Q. You have no recollection of that?

A. No.

Q. "Hence when time comes I or Kerr will wire you to have Continental Chicago telegraph same to First National Bank Harlingen to account of Kerr as I do not want my name to appear if can avoid same stop."

Have you any recollection as to why he didn't want his name to appear?

A. No, I haven't.

Q. Mr. Dunham, that was not the subject of any
1496 conversation between you and Mr. Reichmann?

A. No.

Q. "When time comes it will be necessary to act without delay hence will above arrangement be satisfactory or what do you suggest to handle money it may be a day, week or much longer before matter comes to head and may have to raise price stop We will have to succeed now or never."

Now in any of these conferences did Mr. Dubbs explain to you why he had to succeed now or never?

A. Well, I assume that it was just a question of intuition about a person changing his mind or something of that kind.

1496 686 Q. Now in Mr. Reichmann's reply to Mr. Dubbs of July 22, 1927,—perhaps I might read it, then my question will be intelligent.

"Suggestions outlined your telegrams wholly unacceptable and cannot be considered stop Understanding was that intended negotiations were based on information that party desired to make change in his employment stop On what basis company's understanding was that negotiations with him would be conducted openly and in regular manner stop
1497 Combined judgment and desire is you drop matter and return at earliest convenience for conference."

Now what was it that was not being conducted openly and in a regular manner, that is to say, in what way was Mr. Dubbs acting down there that differed from the instructions and authorization which you have already told us were given him before he went down?

A. I don't think that any definite instructions were given him as to how to handle it but I think Mr. Dubbs' telegram to me on its face would indicate that possibly it was not being handled in the open as the company had understood that it was to be, and the mere fact that Mr. Dubbs did not want his name used in it. I mean that if Mr. Behimer we understood was prepared to leave The Texas Company that matter could have been handled as a perfectly open transaction.

Q. And there was no need to disguise the fact that Mr. Dubbs was appearing as the Universal representative; is that it?

A. Yes.

1497 687 Q. Now the question of the bonus did not raise any question in your mind, did it, as to whether or not this was in accordance with Mr. Dubbs'
1498 original authorization and therefore would cause surprise or consternation?

A. Yes, our company was in the custom of paying bonuses. My recollection is that the question of the rate of compensation to Mr. Behimer—you must remember we had other experts in the employ, a good many of them, and it was desired that we would not go above a certain standard in the matter of the payment of a definite salary, but the question of bonus became more or less contingent upon the demonstrated value of the service. It had been found by us as the preferable way to handle the matter

of compensating employees who were in responsible positions.

Q. As contrasted with a fixed bonus that would be payable, regardless of his conduct?

A. That is right, and also as contrasted with a higher salary.

Q. In other words, your thought was, or rather his original authorization was that he was to go to $15,000 as a fixed obligation and $5,000 per year as a contingent obligation; is that stating it fairly?

A. No, I would not say it was contingent, it was just additional salary if he remained in the employ
1499 of the company.

Q. So it wasn't a question of bonus, then, that aroused Mr. Reichmann's indignation?

A. It was the question of paying a bonus in advance. A bonus is not paid in advance.

1499 688 Q. In that connection you have already testified that when the contract was finally signed a bonus was payable after he had been in the employ sixty days?

A. Under certain conditions, those conditions being that he and his estate would become liable for his contingent employment with the company during the five-year period.

Q. Don't you recall that the agreement was that if he should die during that five-year period his estate would not be liable to pay the notes?

A. That was the risk we took, the only risk we took was the question of his continuing alive.

Q. In other words, if he died the notes were to be cancelled, is that right?

A. Yes.

Q. So the only difference, as far as the bonus is concerned between what Mr. Dubbs outlined in his telegram of July 20, and the contract as originally signed is that instead of being cash down when the contract was signed it was cash within
1500 sixty days?

A. No, there was quite a distinction in my mind. In one case the matter of the $25,000 being paid in a lump sum might have been looked upon as a payment made for the purchase of the contract instead of part of an employment contract, and when the option was given it was only on the condition of the promise

to repay if he left the employ prior to the expiration dates of the various bonus payments.

Q. Yes, but with no obligation to repay at all if he did remain within the employ during the five-year period?

A. That is right.

1500 689 Q. That is right, and that is the only difference you can see between the original proposal in Mr. Dubbs' telegram and the contract as originally drafted?

A. No, I think from a business point of view it was quite different. The question of handling the bonus was one to insure his remaining in the employ of the company.

1501 Q. In other words, if he left the employ of the company during any time in the first five years then he would incur the liability of whatever was still remaining unpaid of that bonus, so that the incentive was pretty strong, was it not, to remain with the U. O. P. for that ten-year period?

A. That is right.

Q. Now, you stated in your direct testimony I believe that Dubbs had been asked to develop the facts in connection with this Behimer case, the interference. Now, who asked him to?

A. Why, I assume the attorneys who were handling the interference in the Patent Office in Washington.

Q. And was Dubbs given power to hire help in making this investigation?

A. Yes.

1502 Q. And was entrusted with the investigation?

A. Yes.

Q. With the responsibility for its carrying out?

A. I don't know what you mean by carrying it out.

Q. Well, for conducting the investigation?

A. Yes. He was the only officer, I mean the only one of the group that was in direct follow up of these activities.

1502 690 Q. Yes. Now, I think you testified on direct that you knew the fact of the declaration of the interference in 1923?

A. That is, that there was such an interference.

Q. Yes. And you also understood at that time, did you not, that that interference was a fight to the death,

may I say, between the Universal and The Texas Company?

A. Well, we had a good many interferences with a good many different concerns, and they were all fights to the death.

Q. Yes, but I mean you understood the issue in the interference, and everybody did, Mr. Dubbs did and everybody else, that it was a question of priority between two inventors?

1503 A. Yes, but the issue did not mean as much to me as if I had understood the cracking process.

Q. But you did understand that much of it?

A. I knew the term "clean circulation" in a vague sort of way.

Q. And you knew that The Texas Company was claiming to be the first inventor of that in that interference?

A. That was my understanding.

Q. And did you know that, when these preliminary statements were obtained that the Behimer dates were earlier?

A. No, I did not.

Q. You did not know that?

A. No.

Q. In these Behimer negotiations, Mr. Dunham, Mr. Dubbs wired you on the 17th of July, 1927, confidentially:

691 "Mr. Thompson president First National Bank Harlingen Texas is very close friend of party we want and is helping us Stop The Continental Bank Chicago is their corresponding bank and it would help greatly but not absolutely necessary if you could have Continental Bank wire Thompson Mr. Kerr is worthy
1504 of any assistance Thompson can render him but do not mention name Stop Wire me what you do."

Now, in that wire Mr. Dubbs asked you not to mention his name or have Continental mention his name, and then you wired Mr. Dubbs on July 18, 1927, DX 226:

"Your two night letters 17th Continental wired Thompson following 'We understand Mr. Robert M. Kerr of Pittsburgh, Pennsylvania, is carrying on certain negotiations with you. We know of Mr. Kerr's connections and believe you can safely rely on the

fulfillment of such reasonable commitments as he might see fit to make for them.' "

That's all that pertains to this. Now, I think you stated in this second telegram that one of the things that aroused indignation was the fact that the negotiations were not to be in Mr. Dubbs' name.

A. No.

Q. Didn't you so state in this telegram of July 20th where he says precisely: "I do not want my name to appear if can avoid same."

Do you say that had nothing to do with Mr. Reichmann's telegram to Dubbs?

1505 692 A. I don't know. You are confusing me a little bit. You asked me the direct question to which I replied no, if the objection was because Mr. Dubbs did not want the contract made in his name. The question of in whose name the contract was to be was not in question at all.

Q. I have no intention of confusing you. Getting back to this long telegram from Mr. Dubbs to you, I understood you to say before that one of the reasons of Mr. Reichmann saying in his telegram: "Your telegrams wholly unacceptable and canot be considered;" was that Mr. Dubbs was suggesting his name should not be used?

A. I was not trying to express what was in Mr. Reichmann's mind. I was trying to express in answer to the question you asked me as to why I thought Reichmann might have replied as he did.

Q. Did he talk to you about it at all?

A. We discussed it over the telephone, Mr. Halle, Mr. Reichmann and myself.

Q. In those discussions was anything said about that factor not being acceptable?

A. That I would not remember.

1506 Q. And in these wires wherein you asked the Continental or wherein you had the Continental wire to Kerr, you did not use Mr. Dubbs' name, did you? Take a look at this.

A. Well, I did not send any telegram.

Q. Well, you sent a telegram to Mr. Dubbs as follows—

A. Quoting the Continental telegram, yes.

693 Q. Well, did you not ask the Continental to send that wire to Mr. Kerr?

A. Oh yes, and I have no recollection as to whether I said anything to them about using Mr. Dubbs' name or not.

Q. My point is this, that in your telegram—in your request to the Continental you asked them to wire Thompson that Kerr of Pittsburgh "is carrying on certain negotiations with you. We know of Mr. Kerr's connections and believe you can safely rely on the fulfillment of such reasonable commitments as he might see fit to make for them."

And in those telegrams you observed, did you not, Mr. Dubbs' admonition not to use his name? Your answer is yes?

A. Yes.

694 DR. FRANK GARN NORBURY:

Direct Examination by Mr. Blenko.

1557 I am associate physician on the staff of the Norbury Sanitarium at Jacksonville, Illinois.

1558 I received an A.B. from Illinois College in 1912, an A.M. from the University of Illinois, 1913, an M.D. from the Harvard Medical School, 1917. I served my internship at Boston City Hospital and I was also an assistant in pathology at the hospital. After that I was in the army from February of 1917 to 1919 as assistant chief of the laboratory service, Base Hospital, Camp Devens, and later chief of laboratory service, Base Hospital No. 7, A. E. F. My first connection was made with the Norbury Sanitarium on May 1, 1919, and I have been there ever since.

1559 The Norbury Sanitarium was founded in 1901 by my father, Dr. Frank T. Norbury, who continues at the head of that institution. Our sanitarium primarily handles nervous and mental disorders.

Otto Wannack was received as a patient at our institution November 20, 1930, and discharged on July 6, 1931. He was not discharged as "cured" but as "improved."

1560 I received Wannack to our institution and pretty much had charge of his case, as I have the more immediate charge of the men's division of the hospital. Altogether four doctors, including myself, partici-

pated in the diagnosis of Wannack's case. The diagnois was general paresis. General paresis is an organic disease of the central nervous system, caus-
695 ing definite changes in the nerve cells of the brain and spinal cord.

Wannack was forty nine years of age when admitted.

1561 Some of the subjective symptoms of paresis are personality change, restlessness, irritability, expansive ideas; or ideas of grandeur. Some ideas of grandeur manifested themselves in Wannack's case while he was under our care. For example, he thought our building should be sixty stories high. He thought that the water pressure in our building was enough to cause that. He wanted a good many newspapers. He asked people to come and stay at the sanitarium whom he thought would be benefited by it. There were various other manifestations, chiefly in relation to financial things and of large sums of money that were not
1562 in keeping with his status at the time. At one time he stated that he had some thousands of dollars and that he needed to leave in order to take care of some important business transactions. He also wrote a letter to the then mayor of Chicago, who was about to make a trip, asking or suggesting that he come to the sanitarium for a vacation. Wannack was not always a quiet, well behaved patient; he was pretty restless at first, although never violent.

1563 As to the treatment—he was give tryparsamide injections and then inoculated with malaria. Malaria, of course, was stopped with quinine and then tryparsamide injections renewed. These treatments are given for syphilitic infection of the central nervous system, generally known as paresis. Wannack was advised that he had paresis. Wasserman tests were made at the time of admission of Wannack to our sanitarium on both blood and spinal fluid.

1564 696 The onset of general paresis is usually a
1565 gradual thing. The average period from the time of infection up until the time the disease becomes so acute as to require hospitalization is from eight to fifteen years. The symptoms oftentimes manifest themselves in that period.

Q. The evidence in this case shows that in the latter part of the year 1925 and in the year 1926, Mr.

Wannack, while engaged in the work of investigation of certain facts made offers of large sums of money to people with whom he was dealing, for example, $5,000, $15,000, $40,000, $50,000 and $300,000; that he boasted of possessing large sums of money; that he boasted of having imported gunmen into Texas and of having assisted them in burglarizing the offices of the company; that he obtained duplicate keys for the file cabinets of that concern and sought to bribe an employee to use such keys and abstract documents from the files for him. And that prior to the time of the events just stated his character and conduct were good,

Having those facts in mind and the subsequent history of his case under your care, could his conduct in the years 1925 and 1926, in your opinion, have been manifestations or symptoms of the illness for which he was subsequently treated by you?

Mr. Von Holst: We object to that question. In the first place it does not state the evidence correctly because the key episode is proved, and that was inserted there as though it were an untrue fact. Anyhow, a long recital of symptoms like that based on
697 evidence in the case is not a proper question to put to this witness.

Mr. Blenko: I submit it is a perfectly proper question, this witness is an expert.

The Court: Yes, the objection will be overruled.

A. It could.

I am testifying here under subpoena.

698 *Cross-Examination by Mr. Von Holst.*

1566 Jacksonville is about two hundred miles from Chicago. I was subpoenaed here in Chicago. I came up here in answer to counsel's request and then was served with a subpoena here. I hope to be paid for attending here and giving this testimony. My fee is fifty dollars a day, and my expenses.

I came up here the other day expecting to be called. This will be my third day in Chicago. So my fee will be $150.

1567 I have testified a good many times in previous proceedings. I imagine I go into court four or five times

a year, sir, in twenty years. I may say that is more than I like to.

The customary history of the disease that I mentioned, general paresis, is that it becomes progressively worse and then fatal, unless results secured by treatment stop the progress of the disease. Untreated parasis is generally progressively worse and ends fatally. About thirty per cent of those treated with tryparsamide and malaria are considered to secure remissions.

At the time that Mr. Wannack made application for admission, a nurse named Robey brought him down and Dr. William L. Baum of Chicago was the referring physician.

1568 I recall Mr. Dubbs' name in connection with Wannack only as a general statement that he was the man with whom he did some work. I don't recall that Mr. Dubbs visited him at the sanitarium. He may have. I would have to go through each page of the record to see.

1570 I do not know of my direct knowledge whether Mr. Dubbs knew that Mr. Wannack was in the sanitarium.

I heard of Mr. Dubbs while Wannack was there 699 through, as I recall, some conversation with Mr. Wannack. We never had any correspondence or anything of the sort. Wannack stated that he knew Mr. Dubbs. I don't recall whether he ever boasted about it. He spoke of connections with various people. He did not tell me that Mr. Dubbs was Mayor of Wilmette. I never knew that.

1571 Mr. Von Holst: * * * May we ask Dr. Norbury to consult his records in Jacksonville, and if Dr. Norbury finds that Mr. Dubbs was a visitor that he will notify us and we may then stipulate that fact into the record: is that satisfactory to the plaintiff?

Mr. Haight: Subject to objection.

Mr. Von Holst: That is in the interest of saving time.

Q. Will you do that, Dr. Norbury?

A. Yes, sir. With whom shall I communicate?

Mr. Haight: Communicate with Mr. Gary.

700 *Redirect Examination by Mr. Blenko.*

1571 I have met Dr. Baum in a few medical meetings but I really do not know him personally. He is not
1572 living now. I do not know whether he specialized in any particular branch of medicine during his lifetime.

The disease with which we have been dealing here involves essentially the nerve cells of the central nervous system. There is destruction of nerve cells or impairment of them if the condition has progressed far enough. If the disease is checked, the impaired cell structure is never restored; the nerve cells of the central nervous system do not regenerate.

701 *Recross Examination by Mr. Von Holst.*

1573 If a person has suffered nerve destruction, so far as that destruction has progressed it is incurable, it has stopped off at that. If there has been destruction up to that time, the cells that have been destroyed, of course, will not regenerate, and the question of normalcy depends on how far the disease has gone before treatment has been instituted.

Q. And if a considerable period of time has elapsed from the time of initial infection to the time that treatment began there would normally be a considerable destruction of the nerve tissue, is that right?

A. That would depend entirely, sir, on what we might call the rate, the speed with which destruction had occurred. In other words, the activity of the disease and, of course, coupled with that the resistance of the individual's nervous system to the disease.

1574 Q. So that you would say that the time element does not enter into it?

A. The time element is definitely a factor, yes, sir, but virulence of infection and the resistance of the host of the infection are also factors.

Q. To what extent are the manifestations which you have described, in answer to the hypothetical question which Mr. Blenko read to you dependent upon the cellular destruction?

A. • • • Those might be manifestations of irrita-

tion and inflammatory reaction, as well as manifestations of destruction.

Q. Would they definitely be manifestations of the destruction of cell tissue?

A. Not necessarily, sir. They could be.

1575 A man may be in a highly nervous condition from entirely different reasons than paresis. That is common experience in my line. He may be irritable and excitable from other causes than paresis or venereal disease.

1575 702 Q. Take those factors that were given you in the hypothetical question, would you say from that alone as your case history and without anything more that you would diagnose paresis?

A. No, sir.

Q. It would be due to other causes?

A. Yes, sir.

703 DR. HARRY R. HOFFMAN:

Direct Examination by Mr. Blenko.

1576 I am a director of the Behavior Clinic at the Criminal Court of Cook County as a physician.

Mr. Von Holst: Your Honor, I wish to interpose this objection before the witness even begins. I think it will be found that he never examined Mr. Wannack; he never attended Mr. Wannack and he had nothing to do with Mr. Wannack and I therefore object to any testimony.

The Court: The objection will be overruled.

Mr. Blenko: In order to save time on cross, I will concede what Mr. Von Holst has just said.

1577 I graduated from the University of Chicago in 1908, Rush Medical College in 1910; was twenty-six years in charge of nervous and mental diseases of the House of Correction, the bridewall of Chicago; for twenty-five years have taught nervous and mental diseases at the University of Chicago at Rush Medical College; at present am associate clinical professor of nervous and mental diseases at Rush, in charge of nervous and mental diseases at the Norwegian-American, Norwegian-Deaconness and Lutheran Memorial hospitals; I was a major in the Medical Corps in charge of nervous and mental diseases, Thirty-Fifth Division, both in this country and in

France; and at the present time am psychopathic consultant to the judges of the Federal Court of this district, of cases confined in the Cook County jail.

I am familiar with the disease known as paresis.

1578 I knew the late Dr. William L. Baum of Chicago. He specialized in a particular branch of medi-

1578 704 cine, genito-urinary diseases, and skin. I heard Dr. Norbury testify here.

Q. The evidence in this case shows that in the latter part of 1925 and in the year 1926, one Otto Wannack, then aged 45, while engaged in certain investigations made offers of large sums of money to people with whom he was dealing; for example, $5,000, $15,000, $40,000, $50,000, $100,000 and $300,000; that he boasted of having imported gun men from Chicago to Texas, and of burglarizing

1578 705 with them the offices of a company in Texas; that he surreptitiously obtained duplicate keys for the file cabinets of that concern and sought to bribe the employes to use such keys and abstract documents from the files for him; and that prior to the

1579 time of the events just stated his character and conduct were good. Having those facts—

The Court: May I interrupt you? Is the question that he boasted of burglarizing, or whether he did burglarize?

Mr. Blenko: He boasted of burglarizing.

The Court: I wasn't sure whether that was connected up with the boasting that you previously—

Mr. Blenko: I intended in the question to say he had boasted of the burglarizing.

Q. Having these facts in mind, and the subsequent history of his case as related in your hearing by Dr. Norbury, could his conduct in the years 1925 and '26, in your opinion, have been manifestations or symptoms of the illness for which he was subsequently treated by Dr. Norbury in 1930?

Mr. Von Holst: I object to the question, if your Honor pleases.

Mr. Blenko: Q. Namely, general paresis?

Mr. Von Holst: I object to the question on the grounds previously stated to a similar question addressed to Dr. Norbury.

The Court: The objection will be overruled.

1580 A. They could have been manifestations or symp-

toms of the disease for which Dr. Norbury treated him in 1930.

706 *Cross-Examination by Mr. Von Holst.*

1580 Q. And they also could have been committed by a man who had no disease whatsoever, is that true?

A. If I had no history of the disease coming on some years later, if I had no history that this individual had a definite attack or positive diagnosis of general paresis in '30—

Q. Then you would have no hesitation that these things are not in themselves symptoms of mental disorder?

A. I believe they are. An individual of good character and early normal behavior that will boast of large sums of money, boast of importing gun men,
1581 I think those symptoms in themselves would be manifestations of abnormal mental behavior.

Q. A good many people boast, do they not?

A. Not in that extreme—at $300,000 or $50,000, of importing gun men; I don't think that is normal behavior.

Q. Suppose these remarks were made in the course of an investigation, and that the man making these remarks wanted to interest those whom he was approaching by promising them large sums of money if they would purloin certain documents, and he made these promises in order to obtain these documents; would that be any evidence of any mental instability?

A. It depends upon the character of the individual prior to the boasting. If the individual had never been known to boast prior to that time, it certainly is definite evidence of abnormal pathological behavior to me.

Q. And so you would have to have that prior history of no boasting, coupled with a sudden streak of boasting, in order to make any definite opinion on such a hypothetical question as has been put to you?

A. It is purely hypothetical. I am assuming up to a certain period of time in the individual nothing was known pathologically about his behavior.

1582 Q. The question did not so state, did it, Doctor; it said a prior good behavior. Is boasting bad behavior?

A. It is pathological behavior.

Q. In every instance?

A. Not in every instance. It depends upon the extent and the extremeness of he boasting.

Q. Do you say that in that hypothetical question, not bosating is included in good behavior?

A. These are more than boastings; these are expansive ideas.

707 Q. I am talking about the period where in the hypothetical question it says of previously good behavior?

A. Yes.

Q. Now when you answered that question as you did, did you read into that previously good behavior, that he wasn't guilty of boasting?

A. I did not.

1583 I testify in court most every day. I am on a salary but I expect to be paid to testify here this morning. I don't know how much; I haven't discussed it with counsel at all. I testify oftentimes for individuals for nothing; for five dollars, ten dollars, depending upon the amount of money involved. I don't know what it will be. I don't know what is involved.

708 *Redirect Examination by Mr. Haight.*

1584 In the hypothetical question which Mr. Blenko put to me, I should say that you cannot disassociate the definite evidence that Wannack was treated for a definite mental disorder, and the hypothetical facts that he presented certain symptoms or manifestations some four or five years prior. The early subjective symptoms of paresis are conduct. The first manifestation to me is a change in conduct or character of the invidiual. This may be manifested in various ways. For instance, I frequently get an individual for riding around in a cab without paying his bill. He may be arrested for not paying his bill, and if the Judge does not order an examination he may be sent to a penal institution. If we examine him, we
1585 find that he has paresis. He has an idea he has a lot of money. He may go into the Blackstone Hotel and rent a room without a penny in his pocket. If no examination is made of that individual he will be brought before the court. The other symptoms are

expansive ideas, they feel fine, great. They may have lots of money, they have influential friends. Then they go on to what we call delusions of grandeur, they definitely feel they have large amounts of money, that they are important personages—Napoleon or Roosevelt.

As to the average time required for paresis to develop to a condition where they need hospitalization, that cannot be answered. I used to teach, and the textbooks used to teach, twenty-five years ago, that the life of a paretic was two years, and that
1585 709 they usually die. Now, because of the intensive treatment of the first stage syphilis, chancre, we see maybe two to twenty years from the time of the onset of the initial lesion, which is the chancre, to the definite end stage of general paresis. The onset of the disease is gradual.

710 *Recross Examination by Mr. Von Holst.*

1586 In the bulk of my cases, I would say the onset of the disease is gradual. Some are not.

Dated July 27, 1938. 711 Opinion of the District Court on defense of unclean hands (delivered orally), dated July 27, 1938.

712 The Court: In this case I have reached the con-
713 clusion that the evidence does not sustain the defense of unclean hands. I shall state my reasons rather briefly. I had hoped I might have the opportunity to file a memorandum and analyze the evidence in detail but I have not had an opportunity to do that, my other work has been too heavy.

First, as to Mr. Behimer: He was within his legal rights in leaving the employ of The Texas Company and accepting employment with the Universal; and the Universal was within its rights in employing him.

The only thing that was required of Mr. Behimer was that he should not suppress evidence, that he should not put himself in a position where he could not testify on behalf of Texas if he were required to do so.

I was impressed by Mr. Behimer's apparent honesty on the stand. The evidence shows that his employers in The Texas Company had complete confidence in his integrity. They did not at any time feel that he had put himself in

a position where he could not testify, so far as the
714 evidence shows here as I recollect it,—of course I did not read it over but that is my recollection of the testimony,—that they did not feel he had put himself in a position where he could not testify to what had been done while he was in their employ. He left complete records so The Texas Company could make its case.

It is true he furnished a statement to the Universal and there are some discrepancies between the statements made there to the Universal and the records as left behind and what he had testified to before and what he testified to here. It did not seem to me as I went over the testimony that those discrepancies were other than such as might occur from a lapse of memory and attempting to detail the record of his experiments that had occurred some time before he made the affidavit, and so far as the discrepancies between the testimony here and what was stated in his affidavit, considerable time elapsed between the making of the affidavit and the testimony here and I do not think those discrepancies are material. I don't think so.

715 If there were any discrepancies there is no evidence that the Universal asked him or requested him or endeavored to get him to make a false statement, as I recall the testimony they asked him to make a statement of what he had done, and he made the statement, and there was no attempt on the part of Universal to get him to make a false statement. Neither do I think that his affidavit put him in such a position that he could not have testified. If he had been called upon by Universal to testify he could have testified to the truth and there was nothing in the affidavit that would have embarrassed him very greatly. If there were any discrepancies they could easily have been explained by the fact that the affidavit was made some time after his records. He could have testified, and I think from all the testimony in the case that if Mr. Behimer had been called upon to testify by Texas in the interference proceedings, he would have testified to the truth. That is the impression that Mr. Behimer made upon me on the stand.

It is the impression that his former employers, The
716 Texas Company, seemed to have had. They have never doubted his integrity so far as the testimony shows here.

As to the occurrences in Texas. I do not think that the methods employed by Mr. Wannack could be considered as

strictly ethical; they were quite unethical, but there is some discrepancy in the testimony between Mr. Wannack and Mr. Dubbs as to how far Mr. Wannack was authorized to go. I will say that I would not consider Mr. Wannack a very reliable witness, both because of his mental condition, and for other reasons. I think Mr. Dubbs' judgment was very poor in electing Mr. Wannack for the investigation that was to be made there and Mr. Wannack's methods could not be justified. However, even Mr. Wannack and all of the others who testified on behalf of Globe, did testify that Universal requested nothing but the truth. They were not, neither Mr. Wannack nor any of those whom he attempted to bribe, were asked to take records, to take and keep records of Texas. They did not get any records of Texas. The Texas Company was not injured by anything that occurred while Mr. Wannack was continuing
717 his operations in the Texas field, and I do not think that a mere desire, if it could be held that that was shown by the evidence, a mere desire upon the part of the Universal to obtain by unethical methods information to which they probably were not entitled, is sufficient to bar it from now establishing in court their rights under the patent.

The defense of unclean hands is similar in its nature to that of estoppel. The effect of it is to bar the plaintiff or the party estopped from showing the real truth of the matter. The effect of it is—the defense of unclean hands, is to prevent, in this case it would be, to prevent the Universal from establishing its rights under a valid patent. I think the courts, while they would not countenance unethical conduct, I do not think the courts should say that a plaintiff may not establish his legal rights in court unless the conduct of the plaintiff has been such that the defendant has been prevented from properly presenting its case.

The cases that have been cited—in the Keystone
718 case, the plaintiff did procure Mr. Clutter to make an affidavit upon which they procured a decision in the first case and used that decision for the purpose of obtaining an injunction to which it would not have been entitled if the judgment had not gone in its favor in the first case. So there was infringement of the rights of the defendant that I think justified the Court—and of course I must agree it did because the Supreme Court so found,—in permitting the defendant to set up and sustain that de-

fense of unclean hands. I do not think there was any conduct in this case which would bar the plaintiff here from maintaining its action, from maintaining its action or that it should be barred on the ground that its conduct had been such that it could not assert its rights in a Court of Equity.

Now there are a number of other matters that I had intended to speak of that I have overlooked, there are many matters of detail. I will say that the testimony of the Kansas City lawyer,—I do not recall his name now, I had it yesterday but I do not recall it now,—but that testimony did not impress me favorably, I could not give
719 a great deal of weight to his testimony.

And upon the whole evidence I feel that the defense of unclean hands has not been sustained.

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720 Findings of fact and conclusions of law,

721 1. The bill of complaint herein was filed on or about July 21, 1931, charging, inter alia, infringement of the hereinafter identified Dubbs Patent.

2. On or about October 4, 1921, many years prior to the commission of any of the acts charged in the amendments to the Answer herein to constitute unclean hands, Letters Patent of the United States, No. 1,392,629, for a Process of Converting Hydrocarbons, was duly issued to Carbon P. Dubbs, who was then associated with the plaintiff, Universal Oil Products Company, a corporation of South Dakota, and was assigned to the latter on or about October 29, 1921.

3. The method of cracking petroleum, primarily for the production of gasoline, disclosed in the Dubbs Patent and in the Behimer Application aforesaid, is known to those engaged in the petroleum refining industry generally as the "clean circulation" process.

722 4. The Dubbs "clean circulation" process was demonstrated to the refining industry by a demonstration run which was made by Universal Oil Products Company at Independence, Kansas, during the summer of 1919, and thereafter, through licensees of said Company, the process was put into large commercial use, and was so in successful commercial use at the time of the declaration of the Behimer-Dubbs Interference referred to in Finding

5 below. Plaintiff was, under its license contract, obligated to defend suits for patent infringement brought against its licensees for their use of the Dubbs process, and hold them harmless in respect to any judgment which might be obtained in such suit or suits.

5. On or about June 8, 1923, an Interference was instituted in the Patent Office between said Dubbs Patent No. 1,392,629 and an application of Holmes, Manley & Behimer, Serial No. 630,242, which was owned by The Texas Company and which contained claims which had been copied from the Dubbs Patent by The Texas Company and incorporated in the last named application. Said Holmes, Manley & Behimer Application, on or about June 10, 1927, was converted into a sole application in the name of Otto Behimer, who was then an employee of The Texas Company and who remained an employee thereof until he resigned therefrom, on or about August 1, 1927, and entered the employment of Universal Oil Products Company, a corporation of South Dakota.

723 6. Each party to said Interference was required, under the rules of the Patent Office, to file a preliminary statement setting forth answers to a series of questions of mixed fact and law, in regard to his work in connection with the interfering subject matter, which statement, shortly after it was filed, because accessible to his adversary.

The preliminary statement of Behimer, inter alia, averred that the invention had been reduced to practice as early as May 1917, and contained other statements, all of which was believed by Carbon P. Dubbs and Universal Oil Products Company to be wholly inconsistent with facts then known to them regarding commercial cracking installitions which had been made by The Texas Company.

7. Universal Oil Products Company felt impelled to, and did, when the Interference proceeding in the Patent Office between the Dubbs Patent and the Behimer Application was instituted, commence an investigation in good faith for the sole object of ascertaining the facts and truth regarding the Behimer work.

8. All that was sought by Universal, and by its representatives, in prosecuting the investigation, was the ascertainment of the truth and facts concerning the work that had been done by Behimer and The Texas Company. There is no evidence to the contrary.

9. Universal never had any intention, and no attempt was ever made, to purloin or keep or destroy any records of The Texas Company, or to suppress, impair or de-
724 stroy evidence, or induce or influence Behimer, or persons informed about his work, to testify falsely or reluctantly, or to obtain false affidavits or statements, or to impair the credibility of Behimer, or any potential witness, or to render them unavailable as witnesses, and none of these results followed from any of the acts done or attempted to be done by Universal, or any of its representatives, but, on the contrary, all of the records of Behimer and Behimer's work remained intact, and Behimer, and all persons having knowledge of his work, were at all times available to those who were entitled to use them; and The Texas Company, and anyone entitled so to do, were at all times, and are now, in a position to make full proof of Behimer's work, even without the testimony of Behimer, if they saw fit not to call him as a witness in any case or proceeding.

10. Defendant has failed to prove any of the allegations of the amendments to its Answer charging, or involved in the charge of, unclean hands on the part of Universal.

11. The aforesaid investigation in no manner injured or prejudiced The Texas Company or the defendant in this cause, or anyone else; but, on the contrary, The Texas Company at all times had and has the complete records of the work done by Behimer and The Texas Company, and at all times had and has available to it the witnesses necessary to establish said work without the testimony of Behimer. The said Behimer has at all times been available at a wit-
ness, and The Texas Company at all times believed and
725 does believe that Behimer, if he had been or were to be called as a witness in any case or proceeding, would have testified, and would testify, truthfully concerning his work.

12. Behimer was within his legal rights in leaving the employ of The Texas Company and accepting employment with Universal, and Universal was within its rights in employing him, and there was nothing reprehensible about Behimer resigning from the Texas Company and accepting employment by Universal, or about his employment by Universal.

13. In accepting employment with Universal, it was

agreed between Behimer and Universal, and always understood between them, that he should not suppress any evidence he might have, and should not put himself in the position where he could not testify freely and truthfully concerning the work he had done while in the employ of The Texas Company if he were requested or required so to do, but, on the contrary, could and should testify freely and truthfully concerning the same.

14. The evidence shows that Behimer's former employer, The Texas Company, had complete confidence in his integrity, and did not at any time feel that he had put himself in a position where he could not testify freely and honestly in reference to the work he had done while in its employ. When he left The Texas Company he left complete records of his work with it, and they have remained intact throughout the years, and The Texas Company believed that, entirely apart from Behimer, it would experience no difficulty in proving by Behimer's records and other witnesses available to it, the work Behimer had done.

726 15. Ever since Behimer entered the employ of Universal, his whereabouts could easily have been ascertained, either at the office or plant of Universal in or near Chicago, or at his home, and ever since the commencement of this suit he has resided at 321 North East Avenue, Oak Park, Illinois, in a home owned by him, and his name and address has at all times appeared in the Telephone Directory, and he could during all of the above mentioned times have been reached by subpoena or by anyone desiring to see or reach him.

16. Neither Universal, nor anyone associated with it, at any time influenced, or attempted to influence, Behimer to falsify regarding his work, or to give any untrue statement under oath, or otherwise, or to give false testimony, or to refrain from giving anyone entitled to it a full and complete history of his work, and to truthfully testify in any proceeding or case concerning the same, or to put himself in an unfriendly position.

17. There is no evidence that Universal Oil Products Company, or anyone in its behalf, asked or requested or endeavored to influence Behimer to make a false affidavit or false statements, but, on the contrary, he was merely asked to make a statement of what he had done according to his best recollection, and that he made the affidavit referred to in the testimony in this case in response thereto,

from his best recollection, without the aid of his records, and not otherwise.

727 18. While there are some discrepancies between the statements made by Behimer in his affidavit and the records he left behind with The Texas Company, and what he had previously stated to The Texas Company, and what he testified to on the stand on the trial of the case, it does not seem to the Court that such discrepancies were other than such as might occur from lapse of memory in attempting to tell in detail of his experiments which had occurred a number of years before he made the affidavit, and approximately ten years between the making of the affidavit and the time of his testifying as a witness in the case, and the Court further finds that such discrepancies are not material.

19. Behimer's affidavit did not put him in such a position that he could not have testified freely and truthfully if he had been called upon by The Texas Company or Universal Oil Products Company to testify as a witness in the Interference Proceedings, or had been or were called by said parties, or anyone else, to testify as a witness in any suit or proceeding, and the Court believes that if he had been or were so called he would have testified and would testify freely and truthfully.

20. A judgment of priority of invention was awarded to Dubbs in the Interference, upon the filing by Behimer of a disclaimer of inventorship of the subject matter in interference, and the ratification thereof by The Texas Company, the owner of the Behimer application, but nothing done by Universal or by anyone in its behalf,

728 charged by defendant to constitute unclean hands, caused or influenced the Texas Company or Behimer to file said disclaimer, or to consent to the award of the Patent Office of priority to Dubbs.

21. The action taken by The Texas Company in the settlement of the Interference 49,355 and Interference 55,610 was in no way brought about or influenced by anything which Universal had done in hiring Behimer or in endeavoring to obtain copies of The Texas Company records, or in attempting to obtain information from The Texas Company employees, or others, or because of anything charged by defendant to have been done by Universal, in its amendments to its answer to this cause, as constituting unclean hands, but that, on the contrary, said interferences were settled and disclaimers filed therein, for reasons satisfactory to The Texas Company, and

having nothing whatever to do with, and in no manner influenced by, the matters and things charged against Universal by the defendant as constituting unclean hands in the amendments to the answer filed herein.

22. Even if it were to be held that the acts of Universal complained of by the defendant resulted in the award of priority to Dubbs, rather than to Behimer, in the Dubbs-Behimer Interference, the defendant was benefited, rather than damaged, thereby, since at that date the Dubbs patent had but approximately seven years to run; whereas, had the award been made to Behimer, a patent would there-
729 after have been issued to The Texas Company for the full statutory period of seventeen years, and defendant would have been interdicted from the lawful enjoyment of the "clean circulation" process for a much longer period than it now is by the Dubbs patent.

23. Neither Otto Wannack nor anyone else representing the Universal Oil Products Company and making investigations in its behalf, was asked by Universal Oil Products Company to take and keep any records of The Texas Company, and did not, in fact, get any such records; neither The Texas Company nor anyone else was injured by anything that occurred while Wannack was continuing his investigations on behalf of the Universal Oil Products Company.

730 Conclusions of Law.

(1) The evidence does not sustain the defense of unclean hands on the part of plaintiff charged in the amendments to defendant's answer herein. There was no conduct on the part of plaintiff proven in this case which should bar the plaintiff from maintaining its action, or obtaining the relief prayed in its bill.

(2) Universal has not been guilty of unclean hands in respect to the matters and things set forth in the amendments to defendant's answer, or otherwise.

731 Order denying defendant's motion to dismiss for unclean hands, entered Aug. 2, 1938.

732 ORDER OVERRULING DEFENDANT'S DEFENSE OF UNCLEAN HANDS AND MOTION TO DISMISS BILL OF COMPLAINT ON THAT GROUND.

Entered Aug. 2, 1938.

This cause came on to be heard at this term on defendant's separate defense, of "unclean hands," to the bill of complaint as amended, set forth and presented by defendant's amendment filed herein on January 5, 1938 to its answer, and its amendment to said amendment filed herein on February 9, 1938, and on defendant's motion to dismiss said bill of complaint, as amended, on the same ground, said defense and motion, pursuant to defendant's application, having been heard separately before the trial of the principal case; and the Court having heard the evidence produced by the respective parties in open court and through depositions, and having heard and considered the arguments of counsel; It Is, thereupon, upon consideration thereof, Ordered, Adjudged and Decreed as follows, viz.:

1. That the evidence fails to disclose that the plaintiff has been guilty of any "unclean hands" in respect to the matters and things referred to in defendant's answer as amended, or in any other respect; and that, so far as any evidence adduced in this cause shows, plaintiff has not been guilty of any "unclean hands".

2. That plaintiff's bill of complaint as amended should not be dismissed and plaintiff should not be barred from any relief therein prayed for because of anything set forth in defendant's answer as amended or shown by the evidence on the trial of the issue of "unclean hands".

733 3. That defendant's defense of "unclean hands" and its motion to dismiss the bill of complaint as amended on the ground of "unclean hands" be and the same are hereby overruled and denied.

Holly,
United States District Judge.

Dated: Aug. 2nd, 1938.

Approved as to form—
Ames, Thiess, Olson & Mecklenburger,
Solicitors for Globe Oil & Refining Co., Defendant.
July 30, 1938.

Filed Jan. 4, 1940.

734 AMENDMENT TO DEFENDANT'S ANSWER.

(Filed January 4, 1940.)

735 Now comes the defendant, Globe Oil & Refining Company, and amends its original Answer to the Bill of Complaint filed herein by adding immediately after paragraph 13 (t) the following:

13 (u) That the said Carbon P. Dubbs was not, and is not the first, original or sole inventor or discoverer of any material and substantial part of the thing patented in purported Letters Patent No. 1,392,629, in that the same and all material and substantial parts thereof were, prior to the alleged invention by the said Dubbs, known to the following named persons:

R. C. Holmes, Shingle House, Pa.

J. G. Detwiler, c/o The Texas Company, New York, N. Y.

F. T. Manley, c/o The Texas Company, New York, N. Y.

Wm. T. Donaldson, Process Management Corporation, New York, N. Y.

A. S. Bailey, c/o The Texas Pipeline Corporation, Houston, Texas.

Harriss A. Smith, c/o The Texas Company, New York, N. Y.

Globe Oil & Refining Company,
By Ames, Thiess, Olson & Mecklenburger,
Its Attorneys.

737 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

7912

Universal Oil Products Company, *Plaintiff-Appellant,*
vs.
Globe Oil & Refining Company, *Defendant-Appellee.*
} Equity No. 10744.

CERTIFICATE.

This is to certify that the following consisting of a bound volume is a part of the abstrict of the record to be printed by the Clerk in accordance with the stipulation

of the parties filed and approved by Evan A. Evans, Judge of the United States Circuit Court of Appeals, on March 24th, 1942.

Alexander H. Reichmann,
Attorney for Plaintiff-Appellant.
J. Bernhard Thiess,
Attorney for Defendant-Appellee.

738 ABSTRACT OF TESTIMONY TAKEN

at Final Hearing

Beginning May 8, 1940 and ending

June 24, 1940

134 742 " 'Stipulation.

'It is stipulated and agreed by and between counsel for the parties, for the purpose of this case only, as follows:

'1. That title to the patents in suit is as alleged in the bill of complaint.

'2) That the corporate capacities of the parties are as alleged in the bill of complaint.

'3) That either party may offer and use in evidence ordinary uncertified printed copies of United States and foreign letters patent, or photostatic copies thereof; that in the case of other printed publications, reprints, or photostatic copies, of one or more pages thereof may also be offered and used in evidence by either party; that said copies of patents and printed publications or photostatic reproductions thereof may be used with the same force and effect as the originals
135 or duly certified copies thereof, subject to correction if error be made to appear, and provided that in the case of the use of less than an entire publication, the opposite party shall have the right to offer in evidence reprints, or photostatic copies, of such other parts or the whole of such publication or publications as it may choose.

'4) That on said copies of any United States or foreign patents offered and received in evidence, the application filing dates printed upon the United States

patents are to be accepted as the correct dates upon which the applications for the respective patents were filed, except as to the patent of Greenstreet, No. 1,740,691, and the patent of Biddison and Boyd, No. 1,345,740, and except as to any other patents which may be offered in evidence as illustrating the prior art and notice of which has not been given heretofore in defendant's answer, or amended answer; the patented dates appearing on said United States patents are to be accepted as the correct dates of patenting and publication thereof; the "sealed" dates, if printed upon British patents, are to be accepted as the correct dates of patenting and publication there-
136 of, and if not printed thereon, the "sealed" dates thereof are to be taken as three months after the
743 acceptance date printed on such British patents; the "delivre" dates printed upon French patents are to be accepted as the correct dates of patenting and publication thereof; the 'ausgegeben" dates printed upon German patents are to be accepted as the correct dates of patenting and publication thereof; that the dates and other facts of publication appearing on the title page or other part of said printed publication, or any printed publications that may hereafter be offered in evidence by either of the parties are to be accepted as prima facie proof of such dates and facts of publication; that the dates shown by the library stamp of the United States Patent Office appearing on any printed publication shall be accepted as prima facie proof that a copy of said printed publication was in the United States Patent Office as early as said date; all of the foregoing being subject to correction if error be made to appear therein.

'5) That either party may offer and use in evidence the photostatic copies which were received
137 as exhibits in the case of Root Refinings Company *vs.* Universal Oil Products Company, pending in the United States Circuit Court of Appeals for the Third Circuit, or photostatic reproductions thereof in lieu of the originals, subject, however, to the right of the opposite party to interpose objections on the grounds of the competency, materiality, or relevancy of the originals thereof, and subject also to the right of the opposite party, in the case of the offer of a photostatic

exhibit which is a compilation, to compel the examination and inspection of the original sources and records from which said compilation purportedly was made.

'6) That uncertified copies of the transcript of record filed in the United States Circuit Court of Appeals for the Third Circuit, in Case No. 5546, entitled Root Refining Company *vs.* Universal Oil Products Company, or any portion, or portions, thereof, may be used in this case for any and all purposes for which a certified copy could be used.

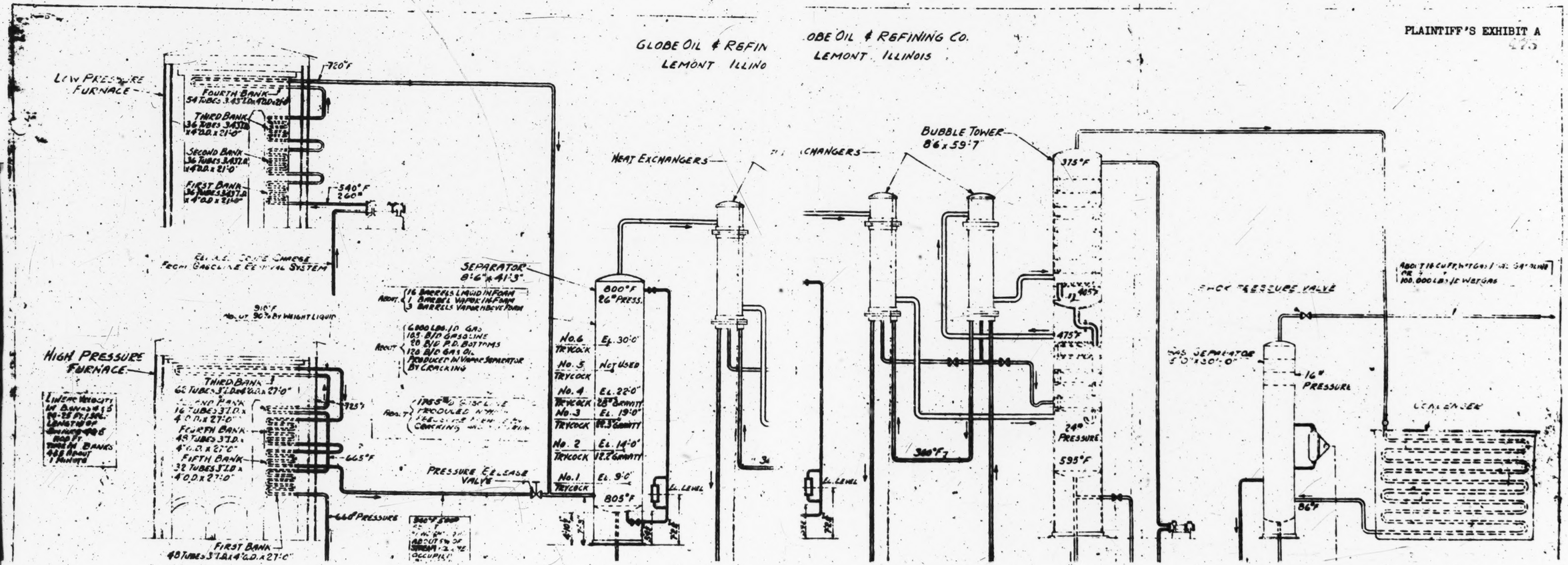
'For the purpose of this case only and in lieu of answers to plaintiff's interrogatories, it is stipulated
138 and agreed as follows:

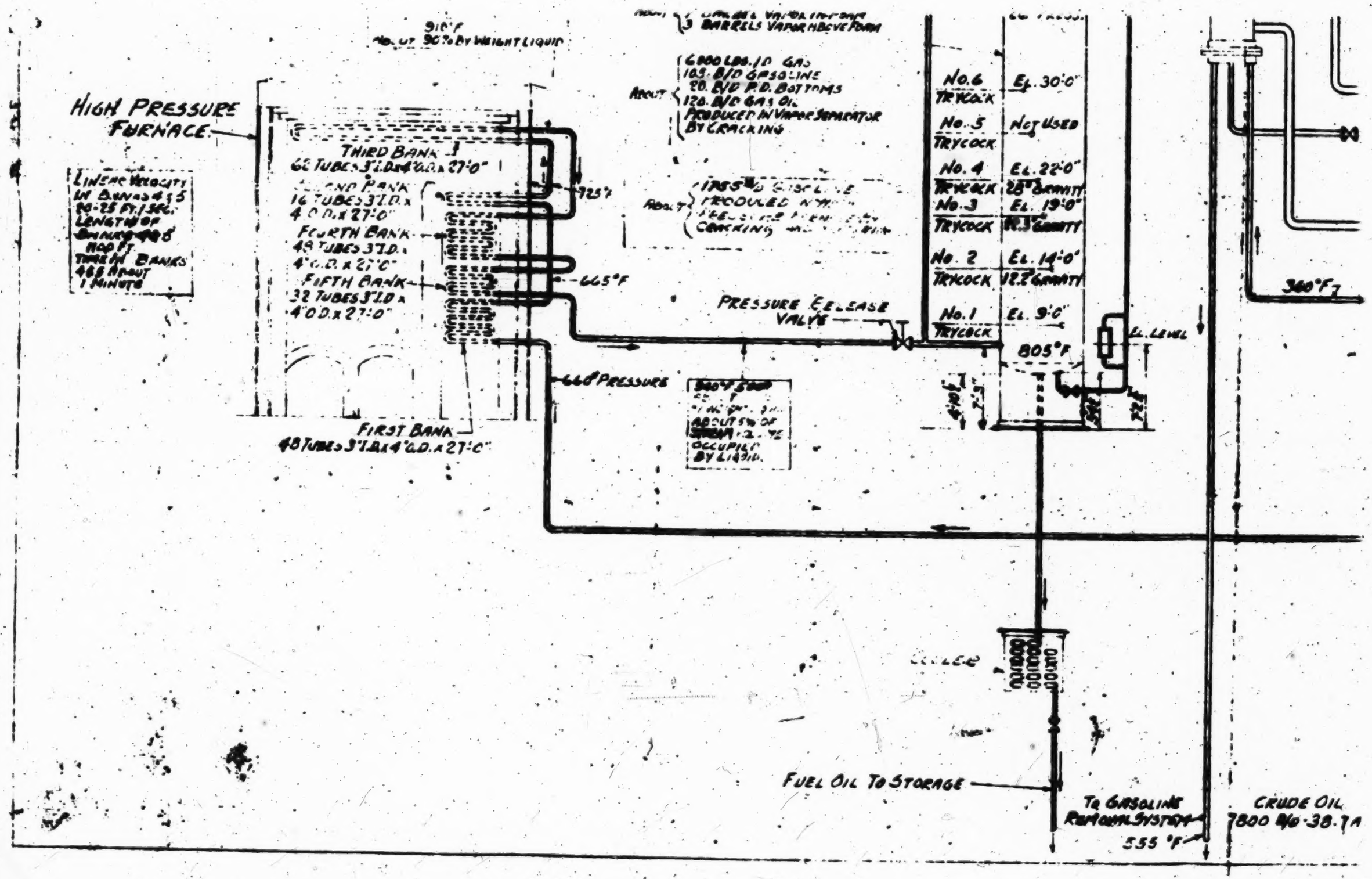
'(a) That during the period of six years next preceding July 21, 1931, at Lemont, Illinois, defendant, Globe Oil & Refining Company, practiced a process for cracking petroleum substantially as shown in the attached flow sheet, marked "Plaintiff's Exhibit A," and that the information given thereon correctly
747 states the facts in connection with the practice of said process, and that the information given on the analysis sheets attached hereto and Marked "Plaintiff's Exhibit B," and "Plaintiff's Exhibit C," correctly represents the facts.

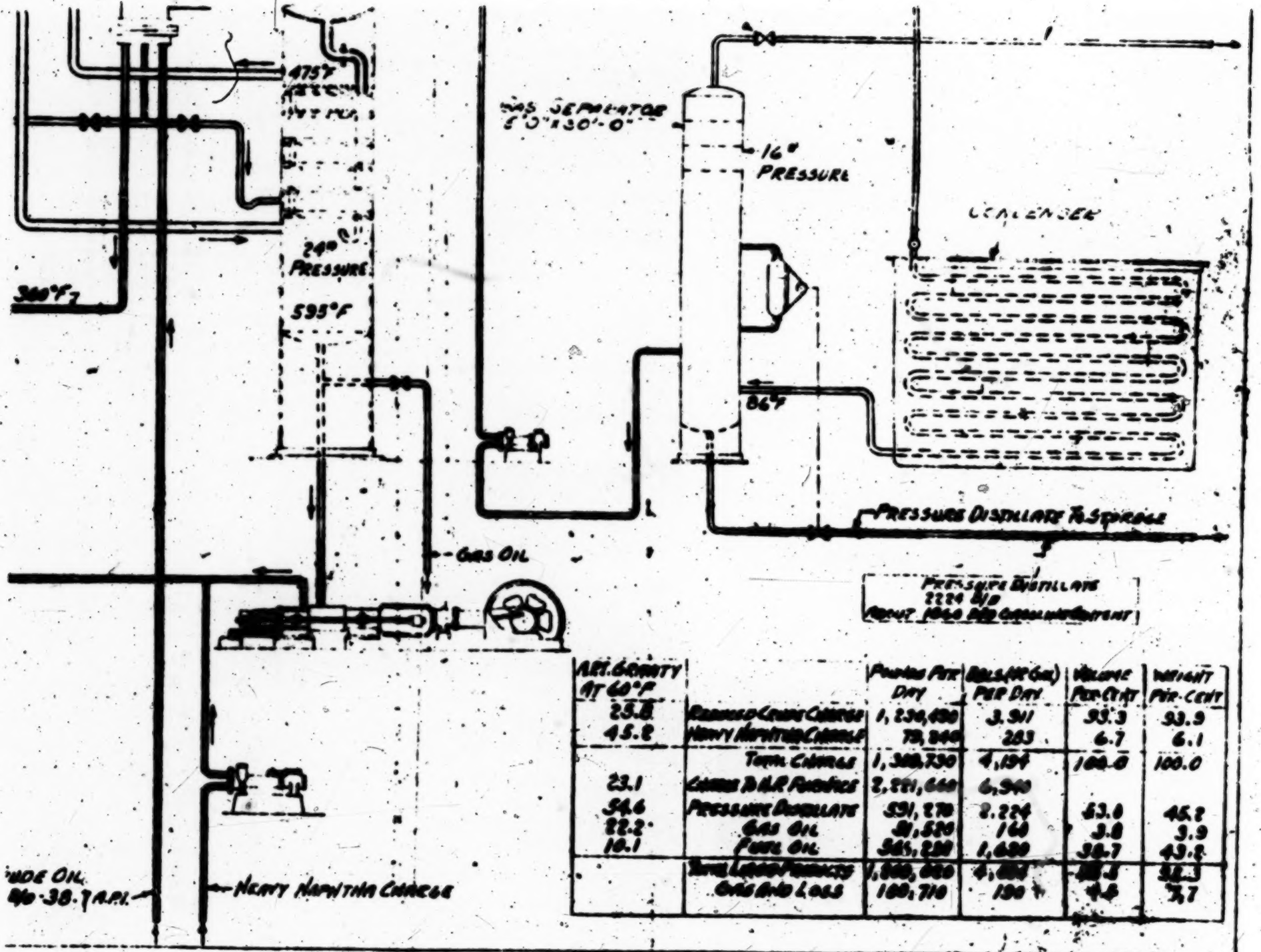
PLAINTIFF'S EXHIBIT A

GLOBE OIL & REFIN
LEMONT ILLINO

OBE OIL & REFINING CO.
LEMONT ILLINOIS




HIGH PRESSURE FURNACE
LINEAR VELOCITY IN BANKS 4 & 5 20-25 FT./SEC.
LENGTH OF BANKS 468 FT.
TIME IN BANKS 468 ABOUT 1 MINUTE
THIRD BANK 60 TUBES 3" I.D. x 4" O.D. x 27'-0"
SECOND BANK 16 TUBES 3" I.D. x 4" O.D. x 27'-0"
FOURTH BANK 48 TUBES 3" I.D. x 4" O.D. x 27'-0"
FIFTH BANK 32 TUBES 3" I.D. x 4" O.D. x 27'-0"
FIRST BANK 48 TUBES 3" I.D. x 4" O.D. x 27'-0"
916°F
ABOUT 90% BY WEIGHT LIQUID
725°F
665°F
660# PRESSURE
ABOUT 3 BARRELS VAPOR ABOVE FOAM
ABOUT 6900 LBS./D GAS
105 B/D GASOLINE
20 B/D R.D. BOTTOMS
120 B/D GAS OIL
PRODUCED IN VAPOR SEPARATOR BY CRACKING
ABOUT 1285 B/D GASOLINE PRODUCED IN VAPOR SEPARATOR BY CRACKING
PRESSURE RELEASE VALVE
ABOUT 5% OF STREAM IS VAPOR OCCUPIED BY LIQUID
No. 6 TRYCOCK El. 30'-0"
No. 5 TRYCOCK NOT USED
No. 4 TRYCOCK El. 22'-0" 28° GRAVITY
No. 3 TRYCOCK El. 19'-0" 31° GRAVITY
No. 2 TRYCOCK El. 14'-0" 32.2° GRAVITY
No. 1 TRYCOCK El. 9'-0"
805°F
EL. LEVEL
360°F
FUEL OIL TO STORAGE
TO GASOLINE RECOVERY SYSTEM
555°F
CRUDE OIL 7800 B/D 38.7A



A.P.I. GRAVITY AT 60°F		POUNDS PER DAY	BBLS. (42 GAL.) PER DAY	VOLUME PER CENT	WEIGHT PER CENT
25.8	RAINBOW LOUISIANA CHARGE	1,230,480	3,391	93.3	93.9
45.8	HEAVY NAPHTHA CHARGE	78,840	283	6.7	6.1
	TOTAL CHARGE	1,309,320	4,194	100.0	100.0
23.1	CHARGE D.A.R. PRODUCTS	2,221,660	6,340		
54.6	PRESSURE DISTILLATE	531,270	2,224	53.0	45.2
22.2	GAS OIL	81,520	140	3.8	3.9
10.1	FUEL OIL	565,230	1,630	38.7	43.8
	TOTAL LIQUID PRODUCTS	1,308,020	4,194	95.5	92.3
	GAS AND LOSS	100,710	190	4.5	7.7

MIDDLE OIL
36-38.7 A.P.I.

745 PLAINTIFF'S EXHIBIT B.

Total Stream Sample

THE GLOBE OIL & REFINING CO.
OF ILLINOIS

Lemont, Ills.,
4-14-1933

LABORATORY RECORD OF

Feed to Large Furnace Gravity, 23.1° API @ 60° F.		Roof Tubes Outlet 24.0° API @ 60°F.		Final Outlet Transfer Line 26.1° API	
Per Cent Off	Temp. °F.	Per Cent Off	Temp. °F.	Per Cent Off	Temp. °F.
I.B.P.	354	I.B.P.	130	I.B.P.	83
10	492	10	395	10	227
20	585	20	490	20	344
30	566	30	536	30	436
40	595	40	575	40	499
50	626	50	609	50	558
60	659	60	646	60	599
70	693	70	685	70	644
2 — % @ 410°F.		11% @ 410°F.		27% @ 410°F.	
72 + % @ 700°F.		74% @ 700°F.		80 — % @ 700°F.	

PLAINTIFF'S EXHIBIT C.

ANALYSES OF PLANT SAMPLES.

GLOBE OIL & REFINING COMPANY (LEMONT).

	Crude Oil Charge to Distillation Unit	Reduced Crude Oil Charge to Cracking Unit Inlet of Low Pressure Furnace	Charge to Cracking Unit High Pressure Furnace		Pressure Distillate from Gas Separator	Fuel Oil from Vapor Separator
			Gas Oil (Bubble Tower Bottoms)	Heavy Naphtha		
Gravity	38.7° API	25.8° API	22.2° API	45.2° API	54.6° API	10.1° API
ASTM Distillation						
Initial	130° F.	432° F.	374° F.	354° F.	87° F.	420° F.
10%	221°	579°	510°	366°	161°	650°
20%	284°	632°	542°	374°	204°	688°
30%	361°	672°	564°	380°	244°	
40%	460°	692°	594°	384°	278°	
50%	542°		622°	390°	314°	
60%	670		650°	396°	345°	
70%			690°	402°	374°	
80%				413°	399°	
90%				422°	424°	
Maximum				446°	449°	
% Loss					3.0%	
ASTM Distillation % Recovered at 158° F.					9.5%	
284°	15.0				42.0	
392°	29.0			55.0%	77.5	
410°			1.0%	77.5	83.5	
500°	44.0		8.0			
600°	55.0	13.5	42.0			
650°			59.0			
700°	68.5	43.5	73.9			

"(b) That as to the sheet marked "Plaintiff's Exhibit B," the data in the first column was obtained from a sample taken from the feed line in the vicinity of the point indicated by the inscription reading "660# pressure"; that the data in the second column was obtained from a sample taken at about the point of the arrow leading from the inscription reading "910° F. about 90% by weight liquid"; and that the data in the third column was obtained from a sample taken from the transfer line between the furnace and the "Pressure release valve" in said
139 transfer line.

"(c) That as to the sheet marked "Plaintiff's Exhibit C," the data in the first column was obtained from a sample taken on or about the point marked "Crude oil 7,800 b/d—38.7 A. P. I."; that the data in the second column was obtained from a sample taken at about the point designated "Reduced crude charge from gasoline removal system"; that the data in the third column was obtained from a sample taken from the line leading from the bottom of the bubble tower to the pump shown directly beneath the bubble tower; that the data in the fourth column was obtained from a sample taken from the line marked "Heavy naphtha charge"; that the data in the fifth column was obtained from a sample taken from the line marked "Pressure Distillate to storage"; and that the data in the sixth column was obtained from a sample taken from the line marked "Fuel Oil to storage."

140 "Mr. Thomas: A stipulation between counsel for plaintiff and defendant in this case stipulating as to the genuineness, if not the truth, of certain documents, and also providing for the introduction in this case of certain testimony taken in another case, with the same force and effect as if it were taken herein.

"I shall have the reporter just copy in the record this stipulation and will file it with the Clerk, unless it has been filed."

"'Stipulation.'

'The parties to this action expressly stipulate the following:

'1. The documents listed in Article (3) hereof are genuine, and were made or written on or about the dates they severally bear. In the case of tele-
748 grams, letters, or enclosures with letters, they were seasonably transmitted and received. Subject to the provisions of article (2) hereof, photostats of any of said documents may be offered in evidence with the same force and effect as though the originals were offered, and without proof of genuineness, or date, such proof being hereby expressly waived.

'2. Plaintiff reserves the right to object to the admission in evidence of any of said documents on any grounds other than those waived by Article (1) hereof. Plaintiff does not, by entering into this stipulation, admit the truth of any alleged facts stated in the documents.

'3. The documents referred to in Articles (1) and (2) hereof are listed as follows:

Pl. Ex.*	3.	Holmes letter to Manley, May 17, 1916.
	7.	Manley's telegram to Holmes, Dec. 28, 1917, re filing applications.
	8.	Drawing Y-4871, Nov. 8, 1921, re modified surge pump on Battery 14, as used about time of run 63.
	11.	Donaldson letter to Holmes, Jan. 22, 1918, regarding filing of coil and drum application, and inventorship.
	12.	Holmes letter to Manley, Jan. 30, 1918, re coil and drum application and Holmes' claim to inventorship.
	13-a.	Donaldson letter to Holmes, Feb. 2, 1918, re inventorship.
	14.	Holmes telegram to Manley, Feb. 6, 1918, re filing of applications.
	15.	Holmes' confirmation of telegram of Ex. 14 with postscript re secrecy and inventorship.

* Exhibits in the case of Texas Company *vs.* Anderson-Prichard Refining Corporation.

142 16. Manley telegram to Holmes, Feb. 11, 1918, re applications.
17. Manley letter to Holmes, Feb. 20, 1918.
19. Mackenzie letter to Nesbitt, March 22, 1918.
20. Telegram Mackenzie to Holmes, March 28, 1918.
749 21. Letter of Mackenzie to Holmes, April 27, 1918, re coil and drum application and Coit conference.
22. Mackenzie letter to Nesbitt, May 3, 1918, re leaving coil and drum application with Coit for study.
23. Mackenzie letter to Holmes, May 31, 1918, re coil and drum application.
24. Nesbitt letter to Coit, June 13, 1918, re summarization of New York conference conclusions re application.
25. Coit letter to Nesbitt, July 22, 1918, advising no interference by proposed applications including coil and drum with Adams.
25-a. Nesbitt letter to Holmes, July 23, 1918, transmitting letter of Exhibit 25.
26. Mackenzie letter to Holmes, Aug. 27, 1918, proposing changes relative to temperatures, etc., in coil and drum application.
143 27. Mackenzie letter to Holmes, Sept. 9, 1918, showing changes agreed to by Coit, in coil and drum applications, etc.
28. Mackenzie letter to Holmes, Oct. 1, 1918.
29. Mackenzie letter to Holmes, Nov. 12, 1918, indicating coil and drum application executed and ready for filing.
30. Detwiler notice, Nov. 29, 1916, relative to secrecy.
37. Drawing No. X-1123, Dec. 4, 1915, original Dewar and Redwood still.
38. Drawing No. Y-1568, 9-19-16, modified Dewar and Redwood still, first modification.

43. Drawing No. Y-1711, 12-11-16, modified Redwood still showing backtrapping.
70. Drawing P-148, 4-16-17, scraping arrangement for high pressure vertical stills.
71. Drawing P-149, 4-18-17, Holmes continuous five vertical still battery.
72. Drawing P-150, 4-26-17, ditto.
73. Drawing P-169, 12-24-17, plan and sections of batteries 2 and 3 of Experiment No. 18.
74. Drawing of 7-176, 7-2-18, details of preheater of battery No. 3 of Experiment No. 18.
75. Risdon letter to Capen, June 18, 1918, regarding ammonia flanges or return bends for preheater of Experiment No. 18.
76. Vilter Co. letter to Texas Co., July 25, 1918, regarding special return bends.
81. Behimer letter to Manley, Sept. 13, 1918, regarding Experiment No. 18 and indicating preheater ordered for battery No. 3.
82. Drawing H-405, 12-4-18, battery No. 4 of Experiment No. 18 (being alterations to batteries No. 1 and No. 2).
89. Drawing (undated) of Parish rotary pump.
90. Sketch (undated) re Worthington steam pump for Experiment No. 11-B.
91. Drawing Z-4346, 3-4-21, backtrap pump used successfully on Experiment No. 11-B.
92. Dow Co. letter to Texas Co., March 23, 1921, relative to Thompson patent hot oil pump, with attached print.
93. Drawing P-227, 6-5-19, plan of commercial unit, Battery No. 14.
94. Drawing P-230, 6-2-19, longitudinal section of Battery 14.
95. Drawing P-238, 6-5-19, preheater sectional details, Battery 14.

751 96. A. M. Lockett Co. letter to Bailey, Jan. 13, 1921, regarding Worthington hot oil pump.

97. A. M. Lockett Co. letter to Bailey, Feb. 15, 1921, with attached sketch and description of hot oil pump.

145 98. Behimer "Notegram" to Elliott, April 8, 1921, with attached Texas drawing T-4515 of Thompson pump.

99. Behimer Notegram to Capen, April 9, 1921, regarding Dow pump.

100. Drawing X-4644, 5-28-21, details of surge pump used on Experiment No. 11-B.

101. Sketch (undated) of liquid and of surge pump.

102. Sketch (undated) showing surge line and ball check valves of surge pump used on Experiment No. 11-B.

103. Drawing V-6, 10-17-21, ball check valves and lines for surge pump used on Run 42 of Experiment 11-B.

104. Drawing Y-4463, 4-13-21, details of valves and chamber of surge pump on battery No. 14.

105. Drawing Y-4630, 5-21-21, details of float gauge and surge pump on Battery No. 14.

106. Drawing Y-4578, 5-21-21, details of float gauge and surge pump on Battery No. 14.

107. Drawing Y-4577, 5-14-21, details of electrical connections, etc., for Battery 14 recorder.

108. Behimer Notegram, May 3, 1921, to Dodge, re pump for Battery No. 14.

146 109. Drawing Y-4749, 8-9-21, revised 9-19-21, showing alterations in surge pump after first installation on Battery 14.

752 111. Run sheets Exp. 18, Battery 3, Run No. 5.

117. Donaldson letter to Manley, Feb. 19, 1918, giving serial numbers of applications on the coil and drum system and the vertical still.
122. Bailey letter to Rahn, April 27, 1921, re pump.
123. Risdon letter to Blackmer Rotary Pump Company, December 30, 1920 re pump.
124. Bailey letter (Nov. 23, 1921) to Manley re Surge Pump for Battery 14 on commercial unit of Holmes-Manley vertical stills.
200. Nesbitt letter to Coit, May 4, 1918.
201. Coit letter to Nesbitt, May 6, 1918.
202. Mackenzie letter to Coit, May 9, 1918.
203. Coit letter to Mackenzie, May 10, 1918.
204. Coit letter to Nesbitt June 3, 1918.
205. Coit letter to Mackenzie, June 15, 1918.
206. Nesbitt letter to Mackenzie and enclosure, September 13, 1918.
207. Mackenzie letter to Thomas, Septemtember 24, 1918.
208. Mackenzie letter to Van Gundy, October 22, 1918.
209. Van Gundy letter to Mackenzie October 31, 1918.
210. Mackenzie letter to Thomas, November 18, 1918.

'4. A true copy of a document which was in evidence in the case of Universal Oil Products Company *vs.* Winkler-Koch Engineering Company and Root Refining Company, In Equity Nos. 716 and 895 753 (hereinafter collectively referred to as "the Root case") later pending in the United States District Court for the District of Delaware, and identified therein as Plaintiff's Exhibit 69 (stipulation relating to Licensees of Universal Oil Products Company) may be offered in evidence herein, and shall constitute sufficient proof of the facts therein stated.

'5. Any part, or all, of the testimony of Dean G. Mechling and George H. Taber and the exhibits identified therein, taken in the suit of The Texas Company

vs. Anderson-Prichard Refining Corporation, In Equity No. 1485, now pending in the United States District
148 Court for the Western District of Oklahoma, may be offered herein by either party and used as though such testimony was originally taken in this case.

'6. Plaintiff and Defendant reserve the right to object to admissions in evidence of any letters, documents, telegrams or evidence covered by this stipulation as being irrelevent or immaterial to the issues herein.' ''

149 "Mr. Thomas: It is also stipulated and agreed that either party may use typewritten copies of file histories or other file records in the Patent Office with the same force and effect as photostats or certified copies, subject to the right to make corrections if error be made to appear."

PLAINTIFF'S PRIMA FACIE CASE.

754 LOUIS C. MOORE,* 1709 Davis Avenue, Whiting, Indiana:

Direct Examination by Mr. Thomas.

150 I am assistant superintendent of the light oils department of the Standard Oil Company of Indiana. This department carries out regular distillation operations on crude oil, cracking operations, and also finishing or treating operations.

151 The material that is produced by the cracking operations is known as "pressure distillate", which is taken to other stills for re-running to obtain the gasoline.

I have had my present position with the Standard Oil Company of Indiana for about ten years. For five years prior to that I was head of the pressure still de-
152 partment, which department carried out the pressure cracking operations for the production of pressure distillate. Previous to that I was in the same department as an assistant.

The Burton Still: I have been familiar with the
153 Burton cracking operations as conducted by the Standard Oil Company at their Whiting plant since the fall of 1912. The first Burton installation was an ex-

* Deposition given October 15, 1936.

perimental still seven feet in diameter and twenty feet
154 in length. This was operated in 1912.

A battery of twelve commercial stills was built in 1912 and operated early in 1913. By the end of 1913 there were ten batteries of twelve stills each: a total of 120 stills. Two batteries were installed in 1915, two more in 1916, and four more in the latter part of 1917 and early 1918. A battery of stills, after 1913, comprised ten stills. In 1918 there was a total of about two hundred stills in the Whiting plant.

155 755 The shells of the first 120 stills were eight feet in diameter and thirty feet in length. The last eighty shells were eight feet in diameter and thirty-one feet eight inches in length.

156 Additional Burton stills were installed at plants of Standard of Indiana at Wood River, Illinois; Sugar Creek, Missouri; Casper and Greybull, Wyoming; Florence, Colorado, and many others. These installations were made prior to 1920, at which time there were around six hundred Burton stills installed at
157 the various plants.

Burton stills were also installed in other plants than those of the Standard Oil Company of Indiana, such as Imperial Oil Company, Sarnia, Ontario, and Halifax, Nova Scotia, some in British Columbia, some in Beaumont, Texas, in California and in many other places.

158 A typical Burton still was eight feet in diameter by thirty-one feet eight inches in length. The vessels were riveted and set on the concrete foundation with the fire box built underneath. The entire bottom of the still was exposed to the flame of the furnace.

PX 504 illustrates the Burton shell still, except for
159 a few minor details. In this drawing the shell 1 re-
ceived the gas oil that was to be processed. This was
160 a "batch" operation, no oil being fed during the running, or "on-stream" period, and no liquid oil was removed. Only vapors left the shell. The shell was supported by a concrete setting 2.

161 756 The still was fired from the front end of the fire box with coal or gas, and the flames played upon the entire length of the exposed shell.

162 At the end of a run, the manhole 3 had to be removed, and a man had to enter the still in order to clean out the carbon. The entire time allowed for

bringing the still off pressure, pumping it out, steaming it, cleaning it, and getting it ready to operate again, was from ten to twelve hours. The actual cleaning took from three to six hours, and required two men per still.

The two vapor lines 4, twelve inches in diameter and about thirty-five feet long exposed to the atmosphere removed the vapors from the top of the still into the
163 radiator 5. Part of the vapors were condensed in the radiator and ran back through the vapor lines 4 into the still 1, where they were subjected to redistillation. These condensed vapors were known as "condensate".
164 The portion of the vapors not condensed in the vapor, or "run-back", lines 4 and radiator 5 were condensed in a condenser 6, and collected in a receiving drum 7, located in the receiving house. The condensed vapors collected in the receiver 7 were known as "pressure distillate". The pressure distillate was withdrawn continuously from the bottom of the drum into tanks, from where it was pumped over to a battery of re-run stills and re-distilled under atmospheric pressure in order to remove the gasoline fractions from the distillate.

The incondensible gases were taken off from the top of the drum 7 and released into the gas system. A pressure of seventy-three pounds prevailed in the entire apparatus including the receiving drum and
757 was controlled by release of incondensible gas
165 from the receiving drum. In later years the pressure was raised to ninety-five pounds.
166 The standard operating cycle, which was fixed largely by experience, was as follows: 8250 gallons of gas oil
167 charging stock was introduced into a top manhole (not shown on PX 504). The manhole was then closed and
168 the fires lit. The still was fired heavily for the first four or five hours to remove the "drips" or moisture in the still. The drips were taken off at the point 8 on PX 504.
169 The firing was continued for another five to seven hours until a pressure of seventy-five pounds was reached, when gas was released from the receiving drum to control the pressure.
170 Shortly after a pressure of seventy-five pounds was reached, pressure distillate accumulated in the drum and the schedule was set to make so much pressure

distillate per hour, which was accomplished by raising the temperature of the oil in the still a certain number of degrees per hour. The period in which pressure distillate was produced was called the "running period," and lasted about twenty-four hours as a maximum to one hour as a minimum.

171 The minimum temperature was 700° F. and the maximum 750° F. When the desired percentage of about fifty to fifty-five percent of pressure distillate, based on the charge, had been obtained, the running period
172 was ended. The fires were stopped, the pressure was slowly released to about 30 pounds, the residuum remaining in the still was pumped out, and the still was then steamed for about one hour and a half.

173 758 Carbon in the still was then cleaned out by the still cleaners. The time for cleaning the still and bringing it off stream required from ten to twelve hours.

The total cycle of operation was about forty-eight hours with a producing period of about twenty-four hours. The average yield of 440° Fahrenheit endpoint gasoline was around twenty-five to twenty-eight percent, based on the charge.

174 The producing or running period was limited to twenty-four hours because experience showed that the still could not be run longer without obtaining hot bottoms, due to carbon or coke accumulations on the bottom of the shell which insulated the shell from the oil and resulted in hot spots. Any longer running period
175 caused buckling of the bottom of the shell due to "hot spots", which at times caused the still to rupture. These hot spots required considerable repair on the shell and resulted in frequent replacement of still bottoms.

Explosions following still ruptures have occurred causing fatalities and much property damage.

176 There was seldom a run made on any battery in which the total desired percentage of pressure distillate was removed due to one or more of the stills failing to meet its schedule.

177 The charging stock for the commercial Burton stills was a light gas oil of around 32 gravity. The character of the charging stock had to be watched closely to insure that no heavy stocks would be included. A heavier gas oil known as straight paraffin distillate

178 was tried, but it could not be run for more than ten hours due to sagging bottoms.

The producing period was terminated when pressure distillate in the amount of fifty- to fifty-five per-
759 cent of the original charge was obtained. By that time the residue had become quite heavy and a point was reached where coke was settling out on the bottom of the still. If the run was continued beyond 55 percent pressure distillate, hot bottoms resulted, requiring considerable repairs.

179 The use of the Burton shell stills was discontinued in the Whiting plant years prior to 1936,* and as of 1936 I know of no Burton stills operating in any plants of the Standard Oil Company of Indiana.

The Burton Tube Still, or Burton-Clark Still:
180 PX 505-A illustrates the Burton-Clark still, which, like the Burton shell still (PX 504), was for use in the production of gasoline from gas oil charging stock. I became familiar with this still at the Whiting plant in 1915, where between 1915 and 1919 a total of one hun-
181 dred units was built. Additional Burton-Clark stills were installed at the plants of the Standard Oil Company of Indiana at Wood River, Sugar Creek, Casper and others.

The Burton tube still differed from the Burton shell still in that the diameter of the shell was ten feet and
182 the length thirty feet, and also in that the shell had connections down to headers into which tubes were placed at an angle of 45°. The tubes, instead of the shell, were fired, the shell being sealed off from the fire by an arch.

183 In PX 505-A, the shell is marked 1 and the tubes are marked 3. The oil received all of its cracking heat in
184 these tubes. The oil circulated through "downcomers" on the back of the still, through the tubes and up through the downcomers on the front of the still. It was just a cycle. No liquid was removed, that is, during the running period no unvaporized residual oil was withdrawn.

760 The overhead apparatus for handling the vapors returning the reflux and securing pressure distillate was substantially the same as for the Burton shell still and functioned in a like manner.

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* The deposition of the witness was taken in 1936.

188 In the Burton tube stills a pressure of ninety-five pounds was maintained thruout the entire system the same as in Burton. The maximum oil temperature reached during the running period was 720° or 725° F.

189 The cycle of operation for the Burton tube still was similar to that of the Burton shell still. The complete cycle was seventy-two hours, which included fifteen hours to bring the still up to pressure, thirty-six hours
190 running period, and the balance used for shutting down and cleaning and getting the still ready to run again. The initial charge to the still was 13,500 gallons, and the additional feed during the running period brought the total charge up to 20,000 gallons. The average
191 yield of 440° F. endpoint gasoline was thirty to thirty-two percent based on the charge.

The percentage of pressure distillate obtained was fifty to fifty-five percent, and was limited to this percentage for the same reasons as in the Burton still, namely, coke formed in the tubes, resulting in hot spots. Hot spots were a frequent occurrence. As the gravity of the oil circulating through the tubes became heavier we would expect to have more carbon formed in the tubes. After 50-55% distillate had been removed considerably more coke formed in the tubes.

192 Considerable trouble was experienced in the Burton tube still in these operations because hot spots on the tubes caused buckling and oftentimes rupturing of
761 the tubes, which resulted in a fire.

193 The feed stock was always a distillate gas oil similar to that used for the Burton shell still. The Burton tube stills were discontinued by Standard because they had a continuous pressure still process which I presumed was a better paying proposition. The Burton tube stills were last used several years prior to 1936.

194 The Holmes-Manley Still: A continuous type of cracking process called the "Holmes-Manley" and illustrated by PX 513 was installed at the Whiting Plant in 1924. It employed a coil in the furnace. The oil was fed continuously through the coil and was released into four vertical stills. The vapors from the vertical stills passed into a bubble tower and from there to the final condensing and receiving apparatus.

195 The residuum from the vertical stills was continuously

removed to storage and rerun. No part of the residuum as removed from the still was admitted to the heating coil. The reflux condensate formed in the bubble tower was returned to the inlet of the coil along with
196 the fresh charge. Cracking occured in the heating coil.
197 The temperature maintained was from 800° to 860° F., and the pressure was three hundred pounds.

The capacity of the Holmes-Manley stills was originally thirty-five barrels per hour and later one hundred barrels per hour of fresh charging stock. The operating cycle was originally around five to six hundred hours, and was later increased. The gasoline yield, based on the charge, was thirty-five to thirty-eight percent.

762 *Cross-Examination by Mr. Thiess.*

199 I have been with the Standard of Indiana continuously since 1896. Commercial cracking on the Burton stills started in 1913.

200 That tar or residuum that was withdrawn at the end of the run on the Burton still was rerun at atmospheric pressure. By rerun I mean just atmospheric distillation in an ordinary still in which we took off the lighter ends from the residuum. That part of
201 that distillate that we took off of the residuum which would conform to the same gravities as the gas oil from crude oil was used as charging stock for the Burton stills. We would get an appreciable quantity of such gas oil out of the residuum when you take into consideration the number of stills we had and the amount of tar being pumped daily.

In the firing of the Burton shell still, we fired hard so as to get our still on pressure at a given time and then we held our still at the point required to get it to
202 run according to the schedule that was marked up. After you got up to the place where the still had reached its cracking temperature, under normal conditions, you would not fire as hard. That was because the still was already on pressure. From then on the firing was so that you got the required amount of distillate overhead, according to the schedule asked
203 for. If, thereafter, you fired too hard and took the distillate off as fast as it came over you would get

more than you wanted and therefore the quality would be impaired.

203 763 We used the 75 pounds pressure throughout the system in this Burton operation because we had to have that amount of pressure in order to put the heat into the liquid. If we did not have the pressure on the oil in that still, we would boil off our oil before we cracked it.

The gas oil charged to this Burton still was prepared
204 in different mixtures so that the gravity would be approximately 30 to 32. It was necessary to use that particular type of charging stock because if we had a heavier type of charging stock we got into a lot of trouble with carbon or coke, and of course, that gave us a lot of trouble with our pumps or with our tubes, as the case might be. I consider the charging stock that we did charge to the Burton shell still a clean stock.

The temperature indicating instruments used on the Burton stills were fairly accurate. We never tested
205 them for absolute accuracy because what we were mostly interested in was that the still was on pressure and running.

We have a corps of men always checking the instruments we use today, and if they were so accurate, we would not need those men.

I doubt whether the readings today are very much more accurate than those on the Burton shell stills in some cases.

206 They have made many improvements in direct reading and recording instruments as used today, but liability for error is still there. In my opinion, there has been much advance made in the recording and
206 764 direct measuring instruments from 1915 on.

As far as accuracy is concerned, instruments
207 today may stay accurate longer. I could not say that they have not made progress. They have made progress. Today they are possibly a little more accurate to start with.

More instruments are used at more different points now. That might give the stillmen a better indication. I believe they know what is going on in their stills today with the instruments they use, and I believe they did in 1915, pretty well.

208 In these Burton stills, we ran for a certain amount of pressure distillate in gallons per hour, but not particularly for gravity. The rate per hour was a graduated percentage. The schedule might run four to five hours at a certain percentage and it was always a higher percentage when you first started and then gradually tapered down.

209 In this Burton shell still operation of PX 504, the condensate or reflux returned to the still was a clean stock.

It was possible to operate the Burton still without 210 return of the reflux, but this was never done commercially. If the reflux was withdrawn, and never returned to the still and not allowed to go over into your pressure distillate, and you charged your still with a batch as you did in the Burton, your pressure distil- 211 late yield would have been very much curtailed because you would not have gotten any yield from your reflux since it was removed from the system.

211 765 In the firing of the Burton still, the flames impinged upon the bottom of the still, but this impinging was not an operation that very materially affected the material of which the stills were built unless the still was insulated with coke on the inside. 212 The flame hitting the shell did affect the material of which it was made under the conditions and temperatures under which the Burton stills were operated, but not to any harmful degree because, since you had the batch of liquid right next to the still, the flame could not hurt it to any extent. The only time it would hurt it would be when coke formed and accumulated on the bottom of the shell stills. The quantity of carbon in the shell at the end of a run on the Burton shell still when you ran for your given yield of 50 per cent off varied considerably; it ran into hundreds of pounds 213 at times. The carbon might be completely over the bottom sheet which was one sheet of steel the full length of the still and reaching up approximately two feet or better on each side. We did not have a solid mass of carbon in there two feet deep; just an incrustation of carbon on the sheet, and of course, it varied in thickness. Sometimes it would be tissue paper thick and again it might be an inch thick. That is the material you had to remove at the end of the run; we had to clean those shells very carefully so that

214 they would shine like a silver dollar. If there was some of that coke left on the bottom of the still, it would be a spot which might cause trouble on the next run.

214 766 The gravity of the residuum withdrawn from the Burton shell still after a run would vary from 22 to 24 according to the charge. If the charge was 32 and an average of only 50 per cent was taken off on that battery, the tar would naturally be lighter than if for the same charging stock an average of 55 per cent distillate was taken off.

215 The yield of gasoline on the charge for the Burton shell still may have run as high as 30 per cent in some cases. The normal yield was from 25 to 28 per cent.

216 When we first started using these Burton shell stills the temperature of the oil in the still during a run increased approximately 35 degrees so that if the instruments on a still read 700 degrees when it came on pressure to run, they would read 735 when it was off. Yet in the same battery you might have a still with the same charge and same conditions which would read 690 when it came on pressure and 725 at the end and the difference in these two stills we would attribute to the inaccuracy of the instruments. At first, ordinarily we started the run on the Burton still in the neighbor-
217 hood of 700 degrees. A little difference in stock might give a different degree of temperature to start running. The pressure used on the Burton stills when we first started operations was 73 pounds. Later on, it was 95. When we changed our pressure, the pressure changed the temperature conditions of their own accord, increasing the temperature possibly 6 to 7 degrees. This increase in temperature should increase the rate of cracking at least five per cent over all.

I don't know whether or not I was aware at the time that I was operating these Burton shell stills that
218 767 an increase in temperature would increase the rate of cracking. I was aware that you could get
219 a better quality of distillate when you increased your temperature.

We did not get any greater quantity of distillate because we only ran about the same percentages off.

The different stocks used in charging the Burton stills were all an overhead stock from some operation. For instance, the overhead from tar that was distilled,

or gas oil from crude. I don't recall that the overhead distilled from our tar was ever used as a stock in the operation of the Burton still without mixing with others.

220 We have run straight gas oil from atmospheric distillation. We have run all kinds of combinations and mixtures of overhead stocks. The only material difference in the operation of the still when we ran straight overhead gas oil as compared with gas oil mixed with pressure tar distillate was that if we ran too heavy a straight gas oil instead of a straight virgin stock, we got into trouble. Stock which would be too heavy might be 28 or 29 gravity Baume. Our charge to our Burton still was always a very clean stock; it had to be a clean stock. It could not be any
221 type of residuum at all. We never charged a reduced crude or a fuel oil to the Burton still and tried to operate it. I certainly would consider a reduced crude or a fuel oil a dirty stock.

The pressure control for the Burton process was at the end of the operation, beyond the final condenser, on PX 504. It is my understanding that the Bur-
222 768 ton patent called for control of the pressure at that point. I presume that the original Burton patent No. 1,049,667 is the patent. I do not believe I ever saw it before. I know there was a patent that called for control at the point at which we controlled. I do not know myself what advantages flowed from releasing the pressure at that point.

To my knowledge, I do not believe any Burton shell stills are being used today.

223 These stills were discontinued in the plants of the Standard of Indiana rather gradually. They were discontinued, of course, after the advent of the continuous pressure still type, and then rather fast. They were also discontinued, to a certain extent, after the advent of the Burton-Clark tube still in 1915. They did not build any more shell stills because the Burton tube stills were thought to be a better type of still.

224 These Burton-Clark stills were not always operated with feed during the operation. We probably started to feed these Burton-Clark stills around 1916.

Referring to PX 505A, the feed was introduced during the operation of that Burton-Clark still into the manifold under the radiator marked 7 on the

225 drawing so that the feed would flow down the vapor line into the shell.

The advantage of introducing this feed into the
226 vapor line at that point over the Burton shell still was that an additional amount was charged to the still,
226 769 thereby getting off quite a little more distillate during that run than from a still that was not fed.

The feeding into the Burton-Clark still did not introduce any complications into the operations as compared with the operation without the feed.

Now in firing the Burton-Clark still as illustrated on PX 505A, the flames at times impinged upon the tubes. Such impingement did not affect the tubes if
227 the tubes were free of sediment or coke. It was immaterial as far as the impingement of flame was concerned during the bringing up time, whether they impinged or not. After you were on-stream and running you would endeavor to fire so as to keep as little flame as possible from impinging on the tube in order to reduce the possibilities of getting the tubes overheated in case there was coke in there. The direct firing of these tubes with flames impinging on them had an effect upon the life of those tubes to a certain extent, but not any harmful effect other than the
228 natural effect expected from fire heating a piece of metal. As long as the oil flowed through the tubes there would not be any particularly harmful effect as the oil carried away the heat, but if a tube was not filled with oil then you might get into difficulties. If you fired an empty tube, or a tube with a lot of oil vapor in it, I do not know just how that would act, but I presume if you continued to do it you would probably blow it up. When you have a tube full of oil and circulating through there and the tube is clean, you do not expect to have any particular trouble.

230 770 Where you had vapor mixed with the oil coming through the tube, I do not think that would do any harm at all. There would be more liquid.

Q. What do you mean there would be more liquid?

A. It would be a liquid. That might be a batch that might have vapor churning it up in the still. It would be liquid in a sense of the word going through the tube.

Q. How much liquid would you have in that tube, do you know? You don't know, do you?

A. I am not that type of chap. I would not know that.

Q. You do not know what the condition of the material was that was in these tubes, do you, or was it always liquid?

A. In my opinion, it was a liquid passing through most of the time; yes.

Q. What do you mean by most of the time?

A. Practically all of the time while the still was under pressure and running.

231 The feed into the Burton-Clark still during the operation of the still increased the amount of the product of that still. If you fed 50 per cent additional charge you would get 50 to 55 per cent off of that in addition to the charge already in the still. By feeding you would increase the ultimate capacity of the still from 13,500 gallons charged to 20,000 charged, and if you took off 50 per cent you would receive 10,000 gallons of product, whereas if you took off 50 per cent of only 13,500 you would only have 6,750 gallons.

232 771 At the time we first started, our cycle on the Burton-Clark still was longer than our cycle on the Burton shell still, that is, our on-stream period. We ran a longer cycle because we had more in there; therefore, a longer period was required to take off the same percentage. We did not actually run for any longer time on a feeding proposition than we endeavored to do when we first started up without feeding. Our schedule was then 72 hours. We were able to run the longer schedule on the Burton-Clark still than we did on the Burton still due to the fact that
233 we had more oil under treatment. Furthermore, the firing of the tubes and not the bottom of the still improved our operation because there was a better circulation in the Burton tube still than there was in a Burton shell still. That circulation gave us a better run in that it would aid to keep our tubes clean, whereas on the shell still there was no such action to keep it clean. At the end of a normal run in the Burton-Clark still, when we took off our regular percentage of distillate, you would expect to find coke in your tubes, and you would find a soft deposit in the shell—not a hard coke like you find in your tubes or on the bottom of a Burton shell still.

234 The amount of coke you would find in your tubes and

in your shell in a normal run differed greatly during the different runs. It might be, in some cases, a very large amount. As compared to another run, a very small amount. You would not expect to have a
234 772 marked difference in the amount of coke in the tube or in the shell unless it might be due to the charge being heavier than usual.

235 The coke in the tubes, under normal operations, would run all the way from 400 to 800 pounds.

Those tubes were four inches in diameter.

I have seen tubes where it was practically all incrustation; no hole through there but the normal operation would vary, as I said. You might have all the way from a paper thickness to three quarters of an inch on the bottom of the shell. I cannot say why in some cases we got the paper thickness and in other cases the half inch or three-quarters of an inch.

236 In the Burton-Clark still, the residuum, remaining after taking off the scheduled percentage of pressure distillate, was taken to an atmospheric still, distilled, and charging stock was obtained from some of the distillate that was taken off. In our Burton-Clark operations as conducted at Whiting, we would get considerable charging stock from the residuum which was withdrawn from the Burton-Clark stills. Distillate thus obtained was clean stock. We would mix it with our gas oil and run it in the Burton-Clark still. We never ran it separately.

237 The gasoline yield on the charging stock of the Burton shell still which I gave as approximately 25 to 30 per cent, does not include the yield that we obtained from the pressure tar distillate that we reran. I
237 773 do not know how much that yield would have been increased if we included the yield obtained from the distillate that we got from the residuum.

The temperatures used in the Burton-Clark still were very much the same as those in the Burton shell stills, except when feeding you had considerably less temperature at the end of a run than you would have on a straight batch operation.

238 The average temperature of the still being fed with a regular light gas oil would be in the neighborhood of 735 at the end of the run. The temperature at the beginning would be approximately the same as the Burton shell. Although in the Burton-Clark

239 you would be firing harder and putting in more heat because you are feeding in a stock that is relatively cold, your temperature would not increase as much as it did in the Burton shell still.

240 Referring to my direct that we hardly ever made a run on the Burton-Clark tube still that was not marked "Hot Tubes", what I meant by "hardly a run" is that as a general thing you might expect to find some one still marked "Hot Tube." It might not have been necessary to shut down because of that. The stillman might mark "Hot Tube" there to kind of save himself. He might feel that if that tube should happen to bulge and he had not marked it he
241 might be accused of negligence. Therefore possibly they were not always hot when marked so.

On these Burton-Clark stills we ordinarily ran on a regular schedule. Most of the time there would be a still or so in the battery that did not make its
774 actual schedule. The majority probably would make their schedule. We had hot tubes on many of the runs when we were running Burton-Clark
242 stills. But we did not always shut down for them. That depended upon the judgment of those inspecting as to how serious the hot spot was. On these Burton-Clark stills we ran for a scheduled yield the same as we did on the Burton shell stills. We could afford to fire harder and take more off at the start than at the end, because we had more liquid in there and it was
243 not as heavy a liquid and therefore cleaner than at the last part of the run when it was gradually becoming more of a residuum. We knew very well that when it got dirty it was time to stop. We never used anything but an overhead or clean stock on the Burton-Clark tube still.

244 The Burton shells were used at Point Richmond, California, but they did not have very great success there because their stock was different. In other
245 words, the stock has a very serious influence on the operation of any of these cracking stills. We soon learned from experience very early in the operations of these Burton shell stills and Burton tube stills, that stock was an important feature in the operation.

246 They had to clean the tubes of the tube stills to that same degree which the Burton shell was cleaned. It was very much more difficult to remove hard carbon

such as we obtained on the surface of the tube or a still that was being heated than it was to remove the soft carbon that we had in the shell of the Burton-Clark still.

246 775 In Plaintiff's Exhibit 505A, the furnace was entirely separated from the still proper, and the
247 fire was applied to the tubes only. There was an advantage in protecting the shell against fire because it was not necessary to fire the shell when the heat was being applied to the tubes. By not firing the shell we very seldom got hard carbon on the shell. This type of still was designed as an improvement over the other and, of course, there was no hard carbon in the part that was not fired. We first learned of this
248 when we first started to operate the Burton-Clark still in 1915.

250 When we first started operating the Burton stills, the pressure used at the temperature used was considered exceedingly dangerous by many around the plant. We did not consider it, with the material and equipment available, as dangerous as we should have done. I had reason to have a more healthy respect
251 for the danger after being with them for five or six years than I had during our first year's operations. With the equipment available, we had some pretty serious affairs.

Stock that had been put through once would be recycle stock when coming back again and in the parlance of the refinery, is termed a refractory stock. By "refractory stock" I mean a stock that would not respond to the original treatment. In other words, a stock that has not once been through would crack easier than a refractory stock.

252 Plaintiff's Exhibit 513 is diagrammatically cor-
776 rect of the Holmes-Manley operation we used at Whiting including the flow of oil. Gas oil was charged into the heating coil and passed into the first still, or A still, overflowing through the lower pipe into each of the three succeeding stills, the vapors from these stills going into the bubble tower or frac-
253 tionating column, being the fifth vessel in this print. The light vapors from the bubble tower passed off overhead down through the condenser coil and into the receiving drum located in the receiving house, the same as it would in the Burton operations.

A certain amount of feed stock was pumped into the coil at the top of the bubble tower which was used as a reflux medium and condensate was returned from the bottom of the bubble tower into the heating coil with the fresh charge. That condensate was a reflux like the reflux that was returned through the vapor line of the Burton and Burton-Clark stills. The liquid level shown in the four tanks in this diagram is approximately the level at which we originally
254 operated these Holmes-Manley stills. The box in cross-section around the various tanks was a housing built around these stills containing small gas fires at different levels as a means of heating these stills.
255 The charging stock used in these Holmes-Manley stills was essentially a gas oil mixture being a clean stock or overhead stock. We never used a dirty stock or a reduced crude for a charging stock. I do not know how long the oil was in the heating coil in the operation of these Holmes-Manley stills or how
255 777 long it was in the still or tank. I believe that it
256 was in the tank a little longer than it was in the tubes. I believe the heating tubes used in these Holmes-Manley stills were somewhere around thirty feet in length and there were a large number of them, giving a heating tube length of approximately eight hundred feet. We lightly fired the various tanks in order to make up for any loss of heat between the outlet of the coil and the time it reached the vessels
257 and the period it remained there. It was the intention to maintain the temperature in the tanks substantially that at which it left the tube. We operated it for a short time that way.

Later in the operation of these Holmes-Manley stills, about 1931, we materially reduced the liquid level in
258 those tanks from near the top of the still (high liquid level) down to near the bottom of the still (low liquid level). After we reduced the liquid level, we did not fire the tanks. We may have discontinued firing the tanks before that time. When we reduced the liquid level, the outlet temperature of our tube was
259 increased up to around 860 or more and we kept the same pressure of 300 pounds. Our temperature is higher now, but that is entirely a different operation
260 now. In the Holmes-Manley operation as shown here on Plaintiff's Exhibit 513, with a low liquid level and

without the enclosure for heating of the tanks, we may have gone above 860, but I do not recall such an operation.

261 778 On this Plaintiff's Exhibit 513 there are a number of motor-driven shafts used originally in this process, as a means of scraping the sides of the still to keep the coke off. In the operation of those scrapers we would break the scrapers or the shaft because of quite an accumulation of coke on the sides of the shell. The amount of coke which accumulated in these chambers at the end of the run differed the same as in
262 any other pressure still. When we first started operating the Holmes-Manley stills with high liquid levels at the end of the run we might have the stills half full of coke. Different stills have different amounts. With high liquid levels the runs were originally at long as 600 hours. We were gradually increasing runs from shortly after commencing operations until we
263 have reached a point where we have run up as high as 1500 or more hours with a low liquid level. Even with the high liquid level our throughput and our length of operating time were gradually increased, and subsequent changes were beneficial along that line of increased charges and increased running time. There was quite a bit more coke in the chambers in the high liquid level operations than there was in the low liquid level operations. We got a hard coke both on the high and low liquid level operation. It might
264 be hard at times and soft at others. At the end of the run in the Holmes-Manley stills you might not need to clean the tubes in the convection section,—the cool part of the furnace. The tubes in the hottest part of the furnace were always cleaned. The
264 779 amount of carbon we found in the ones we cleaned varied. They had to be cleaned very clean just
265 as religiously as we did the tubes of the Burton-Clark and the shell of the Burton stills.

We reran for a time the residuum that we withdrew from the Holmes-Manley still the same as we did for
266 Burton-Clark and for Burton. Certain portions of the distillate that we took off the Holmes-Manley residuum went back into charging stock. One of the reasons in rerunning the residuum of the Burton shell still, the Burton-Clark and the Holmes-Manley still was to obtain additional charging stock from the orig-

inal charge so as to get a greater yield on the material that was originally charged. Other reasons were that according to the demands of your business you might need a large amount of a certain type of residuum fuel and you would run that tar down to a point where it might be utilized as that kind of fuel, and in addition to that you recovered the overhead that you could use for charging stock. The general operation was to
267 rerun the medium to get pressure tar distillate for charging stock or for other reasons. In all of these operations a certain amount of overhead was recovered and put back into the charge.

It was part of the operations of the Holmes-Manley stills to watch the tubes so that you would not get hot spots.

My statement that cracking occurred in Holmes-Manley coil is an opinion on my part not substantiated by actual experiment personally conducted
268 780 by me to determine that fact. All that I do know is that the oil had to receive all of the heat for its cracking through the coil.

269 I believe that we had reached the one hundred barrels (50 gallons to the barrel) per hour charging capacity before going to the low liquid level.

Re-Direct Examination by Mr. Thomas.

270 I am testifying in this case under subpoena. The Burton tube stills at the Whiting plant were discontinued seven or eight years prior to 1936 and we have since used the Holmes-Manley continuous still for the cracking operations.

782 *Recross-Examination by Mr. Thiess.*

272 I was not asked to testify in this case without a subpoena. I testified voluntarily and without a subpoena in the case of Universal Oil Products Co. *vs.* Root Refining Company at Wilmington.

783 WILLIAM E. REID,* 105 Sumner Street, Battle Creek, Michigan:

Direct Examination by Mr. Thomas.

273 I am a designing and estimating engineer on steam, power, and centrifugal pumps for the American Steam Pump Company, Battle Creek, Michigan, and have been actively engaged in the design of all types of pumps used for pumping all kinds of liquids, including oil, since 1890. I have had knowledge of pumping equipment for oils for twenty-nine years prior to 1919.

276 In 1919 there was a recognized classification of pumps based on working pressures. Pumps designed and operated for a discharge pressure of 75 pounds and lower were classified as "low pressure" pumps,
277 and those operated at 75 pounds and higher were classified as "high pressure" pumps. If requested in 1919 to furnish a "standard high pressure liquid pump", I would have understood the desired operating pressure for the pump to be from 75 pounds minimum up to whatever maximum the customer required.

278 In 1919 there existed a standard society of pump manufacturers called the Hydraulic Society, which was an organization of the pump builders in the United States formed to cover standards in the manufacture of pumps of all descriptions. It included the Worthington Pump and Machinery Company, the Union Steam Pump Company, and the American Steam Pump Company. The recommendations and publications of this association were considered standard in the pump industry. Plaintiff's Exhibit 515 is the fly-sheet
784 and page 6 of a publication entitled "Trade Standards in the Pump Industry Recommended by the
279 Hydraulic Society 1921", which tabulates sizes recommended for various pressures and capacities, and clas-
280 sifies 75 pounds and lower as "low pressure" pumps, and for high pressure pumps recommended the sizes for 150 pounds pressure. This classification would hold for pumping of liquid oils.

281 PX 516 includes pages from a catalogue by the Worthington Pump and Machinery Company dated 1920, which also classified "low pressure" pumps as

* Deposition given October 15, 1936.

75 pounds or lower, and "high pressure" pumps as 75 pounds or higher.

785 *Cross-Examination by Mr. Thies.*

283 The classification of low pressure and high pressure pumps has existed since 1897.

284 Prior to 1919, we had pumps of our high pressure classification, 75 pounds or above, that would efficiently pump oil at a temperature up to about 500 degrees; but not at or above that temperature. We first got a pump that would do that on oil along about 1919. I

285 know we could handle hot tar at about 500 degrees F. and above 75 pounds with a special block valve pump evolved about 1913. A pump of this character will handle hot oil, but it was made for hot tar. Thus, there was a pump available in 1913 that would handle hot tar at pressures of 75 pounds and above and at 500 degrees F. temperature, but not above 500 degrees F. temperature.

286 Since 1919, there has been considerable progress in the design of hot oil pumps to handle hot oils at temperatures of 500 degrees F. and higher and at pressures of 75 pounds and above.

287 My information as to pumps evolved for high pressure as of today is that they are building them for all kinds of temperatures and pressures—fifteen hundred, maybe two thousand in temperatures, and twelve or fifteen hundred in pressures; it may run even higher.

Since 1919, there have been pumps developed for nearly any condition in hot oil service that you would require.

786 DANIEL PYZEL,* 117 Sheridan Avenue, Piedmont, Calif.:

Direct Examination by Mr. Hall.

385 I am with the Royal Dutch Shell organization in charge of technical development and supervision of refineries and factories. The Royal Dutch Shell is a

* Deposition given January 15, 1937.

world-wide concern engaged in the production of crude oil, and the transportation, distribution and sale of the products of crude oil. It is engaged on a large scale in the refining of petroleum in the United States, Canada, Mexico, Venezuela, West Indies, the Argentine, most countries in Europe, in Egypt, the Dutch East Indies, Japan, Australia, and New Zealand.

The Royal Dutch Shell has cracking plants in prac-
387 tically all of its refineries. The large majority are Dubbs cracking plants, licensed by the Universal Oil Products Company.

I was educated in Holland and graduated as a chemical engineer from Delft Technical University in 1897. After graduating I joined a company which at present forms a part of the Royal Dutch Shell concern, and since that time I have been employed by the Royal Dutch Shell.

In 1918 I was engaged with subsidiary companies
388 of the Royal Dutch Shell operating in the United States. I was in charge of the construction or erec-
tion of refineries, and of supervising the opera-
787 tions carried out therein. These refineries were located in California, at Cushing, Oklahoma, and at Wood River, Illinois.

As of about 1918, the cracking processes for pro-
389 ducing gasoline in real commercial operations were chiefly the Burton and Burton-Clark processes and modifications thereof. PX 505A is a drawing of the Burton-Clark process.

I first met Mr. C. P. Dubbs sometime in 1918, after obtaining a letter of introduction to him from Mr. Richard Airey, president of the Asiatic Petroleum Company, an affiliate of the Royal Dutch Shell.

390 With the introduction of Mr. Airey to Mr. C. P.
391 Dubbs, I went to Chicago, where Mr. Dubbs met me and the two of us went to the office of the Universal Oil Products Company and met Mr. Halle. My reason for meeting Mr. Halle was to discuss their new cracking process that they had developed. I was invited to visit the Universal Oil Products Company's cracking
392 plant which they had in operation at Independence, Kansas.

Description of the Dubbs Cracking Plant at Independence, Kansas in 1918 or 1919: I witnessed the operation of the Dubbs cracking plant at Independence,

Kansas at the end of 1918 or the beginning of 1919. It was in operation and it performed rather well.

The oil to be cracked passed through a series of four-inch tubes, which were contained in a fur-
788 nace and were heated by means of fuel burners to a high temperature.

"After passing through a series of four-inch tubes the oil was carried over to a series of four or five horizontal ten-inch tubes, which were also placed in a furnace, but were not really heated, but only kept at a high temperature, that is to say, they were placed in part of the furnace in order to avoid loss of heat. And in these ten-inch tubes the vapors and gases were separated by evaporation from the heavy residual liquid."

393 The vapors leaving the 10" tubes were condensed in a partial condensing apparatus in which the higher boiling constituents were condensed, and that condensate, which is called a reflux, was carried back to the feed line, where it was mixed with the raw oil going to the four-inch pipe coils.

The vapors that were not condensed in this partial condensing apparatus traveled farther and were finally condensed to a comparatively light product called pressure distillate, which contained the gasoline produced by the process.

The heavy residual liquid which separated out from the 10" horizontal tubes was continually drawn off and none of the heavy residual liquids were ever again recirculated through the system.

"In the ten-inch tubes vaporization of the product coming from the four-inch tubes took place, that is to say, the vapors were separated from the heavy residual liquid."

394 PX 519 is a diagram of the Independence installation as I saw it in 1918 or 1919.

395 The Independent plant was a "continuous" operation as contrasted to a "batch" operation. It operated with a continuous feed of oil and a continuous withdrawal of product.

789 "Q. As you saw this plant operating, this Dubbs plant operating at Independence, Kansas, was the operation what is known as a batch one or a continuous one?

"A. No, it was a continuous operation; that is to say, it operated for a certain length of time with a

continuous feed of oil, and a continued withdrawal of product until for some reason or other the plant had to be stopped, for cleaning, for instance.

"Q. Do you recall under what pressure the plant was operating?

"A. I do not recall exactly the pressure under which it operated, but think it was around 100 pounds pressure.

"Q. How was that pressure obtained and maintained?

"A. That pressure was caused by gases and vapors which were generated in the tubes in the furnace, and was regulated by the speed with which gas was released at the end of the condensation apparatus.

"Q. Were any vapors, so far as you know, generated in the ten-inch tubes?

"A. There were vapors formed in the four-inch
396 tubes but the separation of vapors from liquids which would constitute a vaporization took place chiefly in the ten-inch tubes."

"Q. And were any vapors generated in the ten-inch tubes, and after their generation separated from the liquid oil therein?

"A. Yes, sir.

"Q. What were the oil temperatures which were employed during the operation of the process when you witnessed it?

"A. I am not quite sure about that temperature, but think it was around 840 degrees."

396- 790 DX 527—Trumble Patent 1,281,884. I am fa-
397- miliar with the M. J. Trumble patent 1,281,884,
398 issued to the Shell Company of California on October 5, 1918. The Shell Company was the owner of this Trumble patent at the time I witnessed the Dubbs plant at Independence.

The Shell Company had practiced the Trumble process, and it had been my task to develop it.

In the Trumble process, heavy oil to be cracked was circulated through a pipe still containing a series of comparatively narrow tubes, where the oil was heated to a high temperature. From those tubes, liquid was discharged into an evaporator, where vapors were separated from residuum. The vapors were carried off to a fractional condensing apparatus.

The residuum was returned by means of a pump to the tubes in the furnace together with a certain quantity of fresh raw material. A small part of the residuum was drawn off from the bottom of the evaporator in an effort to prevent harmful accumulation of carbonaceous material in the stream of circulating oil.

The vapors which were subjected to fractional condensation were divided into heavier and lighter products, and the heavier products could also be
791 returned, if desired, to the circulating oil stream.

"Q. Did you reach any conclusion as a result of the information that you obtained regarding the operation of this Dubbs process which you saw at Independence as to its value and its potentialities as compared to the Trumble process, the Burton process,
399 the Burton Clark process, and other processes for cracking oil primarily making gasoline, about which you were informed?

"A. My conclusion was that the Dubbs process as demonstrated to me in Independence, Kansas, showed one particular feature which made it far superior to the Trumble process which we were trying to develop ourselves, and that for that reason it would be to the interest of our company to come to some arrangement with the Universal Oil Products Company regarding their process.

"Q. Did you reach any conclusion as to the value and potentialities of this Dubbs process as compared
400 with the Burton and Burton Clark process as a cracking process to be used for producing gasoline commercially?"

"A. It was our conviction that a cracking process which was based on heating the oil to be cracked in a large still, where the heat of the fire was applied to the bottom of the still, and on the other side of which were depositions of coke and carbonaceous material was dangerous, and therefore would show in the long run to be ruinous, and that therefore we should try to develop a process in which the heating of the oil to be cracked should take place in a tubular furnace through which the oil was flowing with sufficient velocity to prevent as much as possible the deposition of such material on the heating surface.

"Our work with apparatus built after the Trumble

process mentioned before was going in this direction, but after witnessing the operation of the plant in Independence, I realized that we had made in this work a serious mistake, which was the returning of the heavier residual liquids from the evaporator to the cracking
401 tubes.

792 "At the Dubbs plant at Independence such heavy residual liquid was not returned to the tubes, and only the raw oil mixed with the condensed heavy distillate entered those tubes. The result was that in the Dubbs plant at Independence the difficulties with coke forming in the tubes were very largely eliminated, but this same difficulty was practically the failure of our own efforts with the Trumble process."

After I saw this demonstration of the Dubbs process at Independence, Kansas, I had numerous conferences with Mr. Halle for the purpose of coming to an acceptable agreement by which the Royal Dutch Shell Company would become licensed to operate under the Dubbs inventions.

402 My attention during these conferences was called to the Jesse A. Dubbs patent 1,123,502, issued January 5, 1915, which so far as I remember was the only patent Universal owned. I was not particularly concerned about obtaining a license under the Jesse A. Dubbs patent. It was the other features of the Dubbs process at Independence, Kansas, that made it attractive to me.

403 After I witnessed the exhibition of the Dubbs process at Independence, Kansas, and following the discussion of the license matter with Mr. Halle of the Universal Oil Products Company, I advised my company of my views regarding the Dubbs process in the latter dated October 6, 1919, addressed to Mr. Van der Gracht.

404 PX 520 is a letter written by the witness on October 6, 1919, to Mr. Van der Gracht, and gives the witness' views regarding Dubbs process and his negotiations with Mr. Halle. The following excerpts are taken from this exhibit:

793 "It is, of course, more or less disagreeable for me to say so, but I am convinced that even if we should finally develop our converter into a gasoline plant (which, by the way, we have not yet accomplished), the Dubbs process will always have the advantage of greater simplicity, as it does not use a cir-

culating pump; and greater simplicity means, especially in apparatus of this character, diminished risk of breakdowns or failures, reduced cost of installation and of upkeep and repair. Therefore, I can only say that, as far as the cracking of gas oil into gasoline is concerned, we are already beaten in advance, and I think it is better to acknowledge this, than to hang on to a lost cause for sake of personal or "company" pride.

"This does not mean, that I propose to stop further experiments for the development of our converter process. On the contrary, we must continue work in that direction, with the object of cracking heavy residuums into gasoil, which then could be further cracked into gasoline in pressure stills or in Dubbs' plants, or, if possible, direct into gasoline. But I do not consider it possible to beat the Dubbs process by the converter for the purpose of cracking gas oil.

"As regards the alterations now proposed by Mr. Halle, the reduction of the royalty from 25¢ to 15¢ is rather important. Mr. Halle stated that for other licensees he would not make that reduction, but in our case he could defend it on account of the similarity of their process with ours, and the advanced state of development of our process! Or in other words he gives us a reduction of 10¢ per barrel for not using the converter process. Anyhow, it does not matter how he explains the reduction, he is prepared to make it. • • •

"The second point, concerning the possibility of difficulties arising from the similarity of our converter patent and the Dubbs patent, there is a distinct difference between the two patents and that is, that we use a circulating pump to circulate part of the residuum from the evaporator back through the heating tubes, in order to create a sufficient velocity to prevent undue settling of carbon in those tubes. I take it that our company intends to act with complete fairness in this matter and would consider it unfair to follow the general method of working of the Dubbs process, circulating however a very small quantity of residuum in order to be able to call it a converter. It will perhaps be difficult, but it does not seem possible to fix a
794 distinct line of demarkation between the two processes. Mr. Halle's patent attorney, Mr. Bell, will

be here for a few days and I shall discuss this matter with him."

Description of the first commercial Dubbs unit at
405 the Shell refinery in Wood River, Illinois: After many conferences with Mr. Halle, Shell agreed to take a
795 license under the Dubbs process and thereafter
411 built and operated a Dubbs still at Wood River, Illinois. PX 522 is a drawing of the first commercial unit in which the Dubbs process was used at the Shell refinery in Wood River. This was termed the No. 1 unit.

The general characteristics of the process were the same as those at the plant demonstrated to me at Independence, Kansas, but certain improvements and al-
412 terations had been applied.

The Wood River unit had a furnace in which the oil to be cracked was heated in four parallel series of coils. The oil delivered from these four coils was combined in two headers, the oil from two coils being directed into one header, and from the other two coils into another header, and then discharged into horizontal 16" tubes which took the place of the 10-inch tubes at the Independence plant.

In these sixteen-inch tubes, the vapors were separated from the heavy residual oil, and the residual oil was removed from the process.

The vapors were carried to a "dephlegmator", which took the place of the aerial condenser used at Independence. In this dephlegmator the heavier part of the vapors was condensed, while the lighter vapors constituting the pressure distillate plus the gases formed in the cracking process, were carried to a final condenser, delivering the condensate to a receiving tank from which the gases were removed at a rate
796 so regulated that the pressure in the plant was kept at the desired level.

413 The heavier condensate (reflux) produced in the dephlegmator was mixed with the raw oil going to the cracking tubes. This mixing was done in a different way from that in Independence; namely, the raw oil was pumped into the dephlegmator itself. It acted as a cooling medium for the vapors, and was automatically mixed with the condensate resulting from this cooling effect. This mixture of raw oil and heavy condensate then flowed by gravity to the cracking tubes.

The raw oil fed to this unit was Mid-Continent gas oil. It was heated to a temperature of 840° F. as it
414 passed through the cracking coil. The pressure on the system was somewhere between 120 and 150 pounds. The same method of pressure regulation was followed as was used at Independence.

The force of gravity was used to circulate the heavy distillate with the fresh feed through the cracking tubes in the same manner as was followed at Independence.

Residuum from the separating chamber was discharged and not returned to the system. This was the practice that was followed at Independence.

The gasoline yield obtained in the No. 1 Dubbs plant
415 at Wood River varied between some 20 per cent and over 30 per cent.

Approximately fifteen runs were made on the apparatus of the Dubbs No. 1 plant. Some were unsuccessful on account of difficulties and were, there-
797 fore, interrupted after a short period, but a number of runs of over ten days in length were made.

Part of the No. 1 plant blew up. The cause is unknown. Instead of repairing the partly-destroyed
416 plant No. 1, Shell decided to build a new plant which was called No. 1-A, and in which several of the shortcomings of the No. 1 plant were avoided. The No. 1 plant was rather poorly designed with regard to expansion joints.

417-418 Dubbs plant No. 1 at Wood River was installed about 1920. Dubbs plant No. 1-A at Wood River was installed after No. 1 blew up. There was some delay on account of investigations into the cause of the accident.

PX 523—Drawing of Dubbs Plant No. 1-A at the Shell refinery in Wood River, Illinois:

The Dubbs 1-A plant at Wood River embodied the same process incorporated in the Dubbs Independence plant and the Dubbs No. 1 plant at Wood River, but differed in mechanical equipment and the ways of applying the process.

Plant No. 1 had four parallel series of cracking tubes, and it was found impossible to keep the stream of oil evenly divided over these four coils. Therefore, in plant No. 1-A, the cracking tubes were all combined into one single coil.

In plant No. 1 the evaporating or expansion chamber

was formed by six 16-inch tubes, while in plant No. 1-A, the expansion chamber consisted of one single horizontal drum.

The Dubbs plant No. 1-A at the Shell refinery,
798 Wood River, Illinois operated quite satisfactorily and remained in use for a number of years.

419 As shown by the agreements between Universal Oil Products Company and the Shell Oil Company, PX 521, certain guarantees were made by the Universal Oil Products Company in reference to the gasoline production of the Dubbs process. The two installations of the Dubbs units No. 1 and No. 1-A at the Shell refinery at Wood River, Illinois, met those guarantees.

The Dubbs No. 2 Unit at Wood River: After the Dubbs No. 1-A unit at the Roxana company at Wood River, Illinois, had been installed, an additional Dubbs unit, called No. 2, was installed.

420 The most important mechanical difference between Dubbs No. 2 plant and the Dubbs No. 1-A plant is that instead of using a horizontal evaporator a vertical drum was used.

421 PX 524, which is a flow diagram of the Dubbs No. 2 unit as installed by the Shell Company, became a standard installation of the Universal Oil Products Com-
422 pany. A large number of such Dubbs installations as exemplified by PX 524 were built by Shell Company at Wood River, East Chicago, New Orleans, Arkansas City, Martinez, California, Wilmington, California, Dominguez, California, and in Roumania, Egypt, Borneo, Java, Italy, Germany, France, and other countries.

All of the Dubbs units installed all over the world by the Shell Company, without exception, worked according to the following principles.

423 799 (a) The passage of a mixture of fresh feed and heavy distillate formed in the system through a pipe heater where the mixture was raised to an active cracking temperature;

(b) The discharge of a mixture of vapors and liquid oil from the pipe heater into an evaporator or separating chamber where the vapors which have been generated in the heater and generated in the chamber separated themselves from the non-volatized oil;

(c) The non-return of any part of the residue from said separating step to the pipe heater;

(d) The subjection of vapors to partial, and vapors uncondensed, to final condensation;

(e) The discharge of said final condensate into a receiver.

(f) The intermixing of the partial condensate or reflux with the fresh feed on its way into the entrance into the pipe heater;

(g) The maintenance of super-atmospheric pressure on the system by the formed vapors and gases.

424 The pressures maintained on the Dubbs plants have gradually gone higher as the availability of better materials and better methods of construction have made this possible. In the early days, the pressure was about 125 and 150 pounds. Later, this went up to 275 pounds per square inch and at present even higher pressures are being used.

800 As better mechanical equipment made it possible to increase the rate of flow through the tubes the 425 temperature of the oil in our Dubbs plants had to be increased to get the same degree of cracking. In the early days a temperature of about 840° F. was used. Today we even operate at temperature that are between 950 and 1000° F.

In the first Dubbs plant we used gas oil as a feed for the reason that the guarantees made by Universal Oil Products Company were based on gas oil as a raw material. We very soon switched over to the use of fuel oil as raw material, and in the large majority of the Dubbs plants which are operated by Shell we are running fuel oil. Fuel oil is a product which remains from the crude oil after gasoline and kerosene and sometimes a certain quantity of gas oil have been distilled off. Gas oil is a distillate which is heavier than kerosene and lighter than the lightest lubricating oils. Fuel oil has 426 a higher carbon content than gas oil.

In the cracking operation gas oil forms very much less carbonaceous residuum than does fuel oil. Fuel oil is cheaper than gas oil.

427 Fleming Stills: The Shell Company experimented with the Fleming still at about the same time it put up the first Dubbs unit.

The Fleming still could almost be called a Burton still put on end. The Burton still is a horizontal still with the heat at the bottom; the Fleming still is placed vertically and is heated all around. We expected to

get better results than were obtained with the Burton still in this new Fleming still.

428 801 The Fleming still operation was conducted under superatmospheric pressure. The control valve for maintaining the pressure on the system was between the dephlegmator and the final condenser.

429 The Fleming operation differed from the Jesse A. Dubbs operation in that Fleming did not condense his final products under pressure.

This feature was considered important because if the Fleming still was found to be an economically sound apparatus and process, we could have extended the number of stills and avoided the Burton and Jesse A. Dubbs patents.

430 Greenstreet Process: The Greenstreet process was considered and was demonstrated to me in a plant at East St. Louis at about the same time I had the Dubbs process under consideration.

431 Greenstreet was a vapor phase cracking process.

I concluded that the Greenstreet process was mechanically not quite attractive and also was limited to the use of a clean distillate as a raw material.

The Greenstreet, like all vapor phase processes at that time, showed a very high loss in the shape of gas and that was, of course, one of the reasons why we did not consider it attractive because at that time the only use for gas was fuel. This meant that in the Greenstreet plant, a raw product, with considerably higher value than fuel oil, was degraded partly to fuel value.

432 The Shell Company acquired by purchase, about 1931, some of the stock of the Universal Oil Products Company.

802 *Cross-Examination by Mr. Thiess.*

432 Since my affiliation with the Dutch Shell companies, I have developed various cracking processes and distilling processes on which I filed patent applications and took out patents.

433 Mr. Halle told me that they had developed a process of which they had an experimental unit running, and a patent was in contest, and that I would be welcome to see that and study it.

434 He never said that it could be operated without mak-

ing carbon, but it would be possible to make continuous runs of ten or eleven days, and perhaps more.

I do not remember whether he told me anything about the process, as to the character of the residuum that would be made, whether it would be merchantable fuel oil.

435 I know that in this Independence apparatus they had two rows of heating tubes and a furnace. I don't think there were any more than 12 or 14 tubes, about 20 feet long. I don't remember exactly how these tubes were heated or whether the flames impinged upon the tubes.

436 I don't remember the furnace construction at all, but I do remember that there was a lot of construction about it that was rather poor.

There were either four or five of the larger tubes having a diameter of ten inches, and twenty feet long. I don't have any more definite recollection of the temperatures and pressures that were used in those operations than already given. I did not spend much time at that plant, perhaps one or two days.

These 10-inch tubes were either in a separate

437 803 furnace or they got flue gas from the other furnace. It was built in such a way that those tubes were not overheated. They were heated to keep them warm to prevent them from losing heat by radiation. That was done for economy of operation. They wanted to keep the hydrocarbons in these large tubes hot because this was a cracking plant, and in these cracking reactions evaporation takes place. There is loss of a considerable quantity of heat in the evaporation of these products and distillates.

It was certainly not the object to supply heat in these larges tubes, because they were cracking. That was done in the tubes before.

438 "Q. What was the heat supplied for?

"A. Let us say these tubes were heated, where the oil was, at 840, and they wanted to keep it at 840.

"Q. Why did they want to keep it at 840? What occurred in the C tubes that they wanted to keep it at 840?

"A. Partial evaporation, and partly there was some cracking reaction there.

"Q. And the evaporation was the result of what, Mr. Pyzel?

"A. That was due to the slowing down of the

velocity, and these tubes were half full with liquid which gave them a surface to separate the vapors from the oil."

It probably would be necessary to have a long tube or four or five tubes merely to get that separation of the vapors from the oil. They had a pool of oil standing there, and part of the cracking reaction goes on. The cracking goes slowly. There is a time factor, and
439 the oil was in those large C tubes, considerably longer than it was in the small tubes.

804 We heated that to endeavor to maintain the temperatures in the large tubes the same as the heat of the oil when it left the small tubes; that was generally the object. The pressures which were maintained on this process were substantially the same in the large C tubes as in the small tubes. There was some difference on account of the friction loss.

440 It is true that these large C tubes were heated so that they would not lose too much of their heat by the evaporation or radiation, whatever it is. If these tubes were, for instance, in the open air, they would lose a lot of heat by radiation. They would lose heat because part of the oil evaporated some; the temperature would go down too much.

They would also lose heat because of a little bit of cracking that may go on there. As we understand it at present, certainly there was a little bit of cracking in
441 those large tubes. At that time, 1918, we did not know so very much about cracking.

Our understanding and my understanding at that time was this: that the heating was supplied to that oil in those narrow tubes, the cracking tubes, if you want to call it that, and all the oil passed into the large tubes, where it stayed for some time, and if the temperature was high enough and remained high long enough so that some cracking would take place, there would be further cracking.

"Q. Let me ask you, at that time wasn't it your understanding that if the temperature was substantially maintained in these large tubes, and you had there also the time factor, the proper factor, and you main-
441 805 tained the proper pressures on those tubes, that you would get a substantial amount of cracking in those tubes?

"A. Well, it is a difficult question to answer, be-

cause we did not know exactly at that time what caused
442 the cracking. With the temperatures that you have in the whole body of the oil, the temperature is bound to gain where the oil is heated by too much of the tube but not much higher at the end of the tube. As I measured the average temperature of the product that comes out, it does not mean that the oil has not been at a higher temperature. Do you see what I mean?

"Q. Let me ask you this: At that time did you appreciate and did you know that cracking was the result of temperature and time?

"A. Yes, I did. We did appreciate it.

"Q. And if under those circumstances the oil was maintained in the larger tubes for a longer time, then at substantially the same temperature you got considerable cracking in those large tubes?

"A. Whatever the cracking was that was going on at that certain temperature, of course, it would go on. It is difficult when you talk about appreciable cracking. What is appreciable cracking?

"Q. I am talking about the amount of cracking you got in the process.

443 "A. At that time the amount of cracking you got in the process, the whole process, was what we call at present very low. I mean that formation of gasoline per pass through the apparatus was very low.

"Q. Do you know about how low that was?

"A. Well, if you would think of this, that it was guaranteed to us to get 21 per cent of the gasoline, and that was the result of the recycling, and recycling refluxes were very high."

I have not the faintest idea how much of that cracking was conducted in the large tubes.

806 In this Independence apparatus, the bottom of the aerial condenser was elevated something like
444 20 or 25 feet; not more. In that operation they relied upon that height to get the velocity through the small tubes; they could get the gravity feed.

I cannot say how much velocity you would get with that elevation because it all depends upon the re-
445 sistance in the tube there. They must have had substantial velocity in this Independence apparatus in the small tubes else they would not have been able to put the oil through. What exactly those figures are, I don't

know. I do not have any knowledge of what that velocity was, but the plant was operating.

A report was made by the Western Refiners in 1920 shortly after my visit. If I could see this report, I can tell you how much oil went through the plant.

446 I thought they were depending upon this hydrostatic pressure to maintain this velocity rather than use a pump to push the oil through the small tubes because I had the idea that gravity was the force, as one of my friends said, that is a reliable, abundent and cheap source. That is, that gravity was the best way of accomplishing this, what they wanted to do, and that is to feed back that reflux into the tubes.

I don't think that Mr. Dubbs and I ever discussed a pump because we had pumps. The Standard and we have built more Dubbs plants, and we have depended upon gravity feed, by using the force of gravity, by putting the dephlegmator higher.

447 If you are running a plant with gravity feed of this type, there is the advantage of eliminating one 807 source of trouble from the plant, that is, a hot oil pump. About that time we had developed a hot oil pump, the patent on which is the Thompson patent.

We used that pump in this converter operation. The apparatus works as does the Trumble patent. It requires a circulation of the residuum, and for that we developed this Thompson pump, because Thompson was an engineer in our company.

"Q. Did you believe that the gravity feed would be better than the use of this Thompson pump?

448 "A. If you could avoid a pump at that time you would avoid a source of trouble.

"Q. You say at that time that because they had pumps that were of such a character that they gave you a lot of trouble, when they were using hot oil and high pressure—

"A. In any of these apparatus at that time you mention, do not forget that the development of the technique and the mechanics of the devices that were available as compared with those at the present, it was only very small in the beginning. We had a pump there, the pump was set up by the still, and the pump had to have a lot of connections and valves. You can see that one by the side (indicating). At that time

people were still afraid and I would say very much afraid of a cracking plant.

"Q. Under those circumstances, with the pumps available, would it be, in your estimation, advantageous to use the gravity feed?

"A. If you get the results that you desire, yes, sir, and we have done so for quite a long time afterwards, after our first apparatus."

449 In all our Dubbs operations we first used a pump at a plant that we had at Martinez in California. That must have been before 1925. We did not use the Thompson pump I have referred to; we used an-
808 other type of pump, a pump that we had especially designed. We designed it together with the Byron Jackson Company. We called it an inefficient centrifugal pump. I had a hand in the design of that pump. Patent No. 1,597,821 (DX 525) is directed to that pump.
450 In the operation of the apparatus as shown in that patent in Fig. 1, that is the Dubbs process disclosed there and it was this centrifugal pump that we installed at Martinez.

In this Independence operation it was essential to have a substantial velocity of hydrocarbons as they flowed through the small tubes and it was advantageous to reduce the velocity of these hydrocarbons as they flowed through the larger tubes.

451 I saw the plant running, I saw the charging stock running in, and I saw the product coming out.

I think I observed a distillation of some character that was made at the operations in Independence when I went there to witness it, because they had to prove to me that it was working, and there was a certain amount of gasoline in the process that would distill. I do not remember any of those distillations at all.

"Q. Do you remember how much gasoline was in the charging stock?

"A. I was not very much interested really in the results of that plant.

"Q. You were not very much interested?

"A. No, sir."

452 After I had seen the Dubbs process in Independ-
809 ence, I conferred with Mr. Halle, partly in Chicago, partly in San Francisco, and sometimes here in New York, for the purpose of getting more information respecting this process and the operation of it

and the sort of terms that I might be able to negotiate between my company and the Universal Oil Products Company.

453 I went to Independence the begnining of 1919, or the first part of 1919. .

In this license agreement that I entered into with the Universal Oil Products Company, reference is made to the Jesse A. Dubbs patent No. 1,123,502 (DX 526) and to a number of applications. I knew at that
454 time of the litigation which was pending between the Universal Oil Products Company and the Standard of Indiana on the Jesse A. Dubbs patent and the Burton patent. I knew also that this litigation had been going on for some time and that there was a real fight on it—on this problem of condensation under pressure.

455 When I entered into that agreement, I did not
810 make any study of the applications that are mentioned in it. I don't really know whether the Dubbs '629 patent here in suit is among those applications mentioned. It probably is. I did make a study of the Jesse A. Dubbs patent. I made a study of the patents that issued on the applications referred to in this license, Exhibit 521, after they issued, of course. I entered into this license agreement without making
456 any study whatsoever of any of these applications for two reasons. The first reason was I am quite sure that Mr. Halle did not want to disclose his applications to me. He told me previously about certain features that they had applied for; and, of course, I understood that the one feature we were interested in was applied for, and that was this "clean circulation."

The guarantee of a 21 per cent yield in this license agreement is based on the use of Mid-Continent gas oil as a charging stock.

457 "Q. How did that compare with the yield you got from the Burton and Burton-Clark operation?

"A. That was not so very well known to us."

I never had operated the Burton and Burton-Clark process; I merely made a study of it. At that time, whatever was known about the yields of those processes I read: But I do not remember at the present time. We were not interested in Burton, because it would have
458 been absolutely impossible for us to get a license under

the Burton patents because our companies and the Standard Oil Companies were not on very good terms.

At the time that I entered into this license agreement with Mr. Halle, I discussed with him some of
811 the patents owned by the Dutch Shell Company.

I told Mr. Halle, "I have seen that plant at Independence, and it has certain features in it in which we are very much interested. Apart from that it is very poor construction and design, and I am quite sure we will be able to develop that and add very considerably to the development of this process. I am now only interested in this one point." It was agreed that whatever we would develop and improve in the process would belong to us and the Universal would not get any rights therein. And so at the time we discussed
459 the patents which Shell had.

In a later agreement of March, 1925, the Dutch Shell sold to Universal the patents and applications owned by it for a consideration of 25 per cent of the yearly royalties paid by each of the said Shell companies to Universal. We made that agreement because, although Universal did not have the right to use our improvements, they nevertheless were using them. For instance, the tubular furnaces in the first Dubbs plants were devised by us; and the dephlegmators that replaced aerial condensers were of our design, the idea
460 of the overhead feed, putting raw oil in the dephlegmator, that came from us. Then particularly the pump in this patent, DX 525, that I worked out with Byron-Jackson, was used as a regulating device. The Universal had been using all these improvements.

All these improvements that I have enumerated
461 contributed very materially to the success of this Dubbs operation.

I drew Mr. Halle's attention to the clause in the supplemental agreement and told him he did not have the right to use these improvements but that we could come to an understanding about this. After long
812 discussions and negotiations, Mr. Halle and I entered into an agreement in March 1926.

Universal, subsequent to that agreement of March 31, 1925, made these payments to the Shell Company as provided in the agreement, until 1931 when the relations between the companies were changed. At that

462 time the payment of this money ceased, as the Shell Companies acquired a paid up license from Universal.

In negotiations between various oil companies and the Universal, it was decided that the Universal could be taken over for twenty-five million dollars. Our companies and the Standard companies were the big-
463 gest licensees of the Universal, and Mr. Hanna of the Standard Oil Company of California and I thought that we might take the complete ownership of Universal. Then it would be up to us to make peace with all these various other oil companies. At that time there was a very large number of infringement suits and interferences. Of the twenty-five million, the Standard of California and our companies together paid ten million, and the remaining fifteen million dollars was paid by the same two companies, Shell and Standard of California, Standard of Indiana, Standard of New Jersey and The Texas Company, and for these fifteen million dollars those various companies got an agreement. How much the Dutch Shell actually paid for this paid-up license is all a question of how you want to consider it. It was often quite difficult with our
464 own people to agree. My point of view was this: That it did not matter what we pay, whether we get notes for what we paid or not. The whole thing was, let us get out of the difficulty and these lawsuits that are threatened. I took it this way, that we paid seven and a half millions, and we put in three millions for A notes; and if we never got a cent return on the
813 notes, we could consider that as a paid-up royalty, so that we could consider ten and a half millions as our paid-up royalty.

The royalty which we paid in 1930, the year just previous to this agreement, must have been in the neighborhood of two and a half or three million dollars, on which we got a return of 25 per cent.

465 Referring to this license agreement of 1925, PX 521c, and particularly Exhibit A listing the Shell Company patents and applications assigned to Universal, item No. 2 refers to the Trumble patent No. 1,281,884, DX 527.

Item No. 4 is one of my patents No. 1,506,444, DX 528.

466 Item No. 6, application No. 576,926, referred to in

the schedule, resulted in patent No. 1,891,218, DX 529, and is one of the patents sold and part of the consideration.

467 Item 8, application Serial No. 722,296, resulted in patent No. 1,597,821 and is Exhibit 525, the pump patent that I have identified.

Exhibit B is attached to this agreement, PX 521c. Item 16 thereof is application No. 658,190, which resulted in my patent No. 1,622,737, DX 530, and is part of the consideration.

468 In my patent DX 529, I discuss the prior art, and on page 1, beginning at line 53, under "(A)," I state:

"Stills of large volume in which the oil is heated under pressure. In devices of this character the still may be first charged with oil and as the reaction progresses fresh oil may be run into the still, the lighter cracked products being taken off as vapor until the amount of carbon in the oil becomes so high that the carbon commences to deposit on the walls and particularly on the heated surfaces of the still. This is often disastrous to the still as these deposits have
469 a high heat insulating value and as soon as deposition starts there is a decided tendency for the walls of the still under the deposits to overheat and to buckle or even blow out under the pressure necessary for the
814 reaction. It is therefore necessary to use such processes largely on oils which do not produce large amounts of carbon upon being cracked and it is also necessary not to carry the concentration of carbon in the still too high."

The particular operation which I had in mind when I described that was the Burton still and also the Fleming still, in which we were interested, and on which we were working.

In item "(B)," beginning at line 74, I state:

"Apparatus in which a considerable portion or all the heating is done in tubes, the oil passing through these tubes and being delivered into large reaction chambers in which the cracking reaction takes place and in which carbon is deposited. The capacity of the reaction chamber to receive the deposited carbon limits the amount of oil that can be run through, it being common practice to run until the reaction chamber becomes

470 so full of carbon that it is necessary to shut down and clean it out."

I think the operation I had in mind there was the Burton-Clark.

I now take the drawing of the Burton-Clark operation, PX 505, to show how the quoted operation would be worked in Burton-Clark.

The tubes 3 of PX 505 A are the apparatus in which a considerable portion of all the heating is done, and the heated oil is delivered into this reaction drum of PX 505 in which the cracking reaction takes place.

471 You cannot avoid having some cracking taking place in these tubes, but the velocity of the oil through the tube is very fast, so that the time of cracking is very short. In the tank or drum a large body of oil is standing and it keeps the temperature.

471 815 And that is where, even if the speed of the reaction should slow down, the larger part of the cracking happens.

As to how, the remainder of the quotation, i. e.,

"The capacity of the reaction chamber to receive the deposited carbon limits the amount of oil that can be run through; it being common practice to run until the reaction chamber becomes so full of carbon that it is necessary to shut down and clean it out."

applies.

472 That is the way I describe the Burton-Clark process. In the Burton-Clark operation they would fill this reaction chamber No. 1 of PX 505-A with carbon. I would not say they filled it, but they let it run until there was too much carbon in it. It may be practically full. Let us say, if half the volume of the tank is carbon and the rest is oil, there is not sufficient volume

473 of oil to have the cracking reaction taking place. I mean you stop at the moment that there is too much carbon, whatever too much carbon means. That depends on operating properly. But in the disclosure here under "(B)" I say: "The capacity of the reaction chamber to receive the deposited carbon limits the amount of oil that can be run through." By that, I mean that the larger the reaction chamber the more carbon I could have in there and the longer our run would be in this Burton-Clark operation.

I say further, "it being common practice to run

474 until the reaction chamber becomes so full of carbon that it is necessary to shut down and clean it out." That means a very substantial and large quantity of carbon in that chamber.

I would say they had tons of carbon in those chambers when they operated the Burton-Clark. This
816 can all be full of carbon up to the overflow pipes of PX 505-A. These Burton-Clark stills were filled with oil, and then started up, and once they were operating fresh oil was fed in.

475 The feed was not put into the dephlegmator line on PX 505-A. There is a very small pipe there. It is probably only for the purpose of washing it out, to keep that vapor line clean. The "four-inch oil charging and tar discharging" pipe which I have marked "12" is the pipe that was used to charge fresh oil to this Burton-Clark operation while the still was running.

476 "Q. Now, when this still was started, when it was operating, and when that carbon builds up in this big chamber up above the oil outlet and inlet it has to percolate through that carbon to get down in the tubes, that is what it does, doesn't it?

"A. That is just what I am not quite sure about, because there must be a free passage for the oil down this line so that you have great velocity of the oil through those tubes.

"Q. How do you have that velocity if the carbon is built up so that the chamber is half full of carbon?

477 "A. That is exactly what I told you I am not too sure about. I do not mean half full, but a certain quantity, so that if it is too full to operate any further and you shut down, but it may be necessary to build up carbon that is 24 inches, and it leads that down that pipe which already is limited.

"Q. Then I understand that in this disclosure that you have given here, where you say 'The capacity of the reaction chamber to receive the deposited carbon limits the amount of oil that can be run through; it being common practice to run until the reaction chamber becomes so full of carbon that it is necessary to shut down and clean it out'; would that mean just a small amount of carbon or a large amount, or 24 inches?

"A. That is a small amount.

817 "Q. That is what you say would be substantial, as you say here, 'it being common practice to run until the reaction chamber becomes so full of carbon that it is necessary to shut down and clean it out,' is that your contention?

478 "A. If that carbon builds up here you may be able to run, or you may run into trouble, because if there is no free flow of oil in this, down that pipe, you can't have the required velocity through all these numerous parallel tubes here."

It is possible in this operation, where you would not get the proper velocity through these heating tubes, that the oil flow would cease long before the chamber was anywheres full. It is also possible that you can start up this way and build up carbon and get a kind of funnel-shaped opening in the carbon down to the tubes. I have never seen the Burton-Clark process operated where the chamber was full of carbon. I got the understanding that the Burton-Clark processes were operated to build up tons of

479 carbon in the chamber, in the first place, by whatever was published about them, and in the second place, as a refinery man, that would be the safe way of running it.

I cannot refer to any publications in which the Burton-Clark process was operated so as to obtain tons of carbon in the chamber. I think we might find such a publication. At least I saw tons and tons of coke.

The operation as disclosed under "(B)" in DX 529 does not apply to the Dubbs operation as of 1922,

480 because it does not mention any draw-off of residuum during the operation of that plant. Further, in the Dubbs plants that we built in 1922 all the heating was done in the tubes and not a considerable portion.

In the Dubbs run as I first saw it, some of

818 the heating was done in the tanks too. But we are now talking about 1922. My knowledge of the Dubbs operation in 1922 was what happened in Independence and what we did in Roxana. In the Roxana operation there was no heat applied to those sixteen-inch tubes on the top of the furnace of No. 1, and certainly not in 1A.

481 "Q. But if those tubes (in Unit No. 1) were not on the furnace and were out some place else where they would not be exposed to the heat of that furnace, they would lose more heat, would they not?

"A. They would lose some, but it does not mean that they receive heat. When you are in a warmer atmosphere—they would only receive heat if the atmosphere around the tubes were at a higher temperature than the tubes themselves.

"Q. It is your contention now that this statement under B in no way discloses the Dubbs operation then, does it?

482 "A. It does not."

In this patent, I was undertaking to classify the processes of the prior art—what I stated as prior art.

"Q. You classified "(A)," which you say is Burton, and you classified "(B)," which you say is Burton-Clark, and you were acquainted with the Dubbs process. How was it that you did not classify that in that patent?

"A. I don't think that I meant to say here, or that it was meant to say here, that this was the complete prior art, because then we would have to write a kind of hand-book on whatever was done on cracking to differentiate them by those things in which you have large drums heated."

I knew that there was a substantial difference as far as types were concerned between the Burton process and the Burton-Clark process, because the Burton-Clark is a decided improvement on the Burton still, insofar as the oil is heated in the tubes instead

483 of directly in that large still. I consider that

819 those are two entirely different types of apparatus but I wouldn't say they were different types of processes. It is the same process, just an improved apparatus.

"Q. Now, let me ask you this, Mr. Pyzel, is it not true of the Dubbs operation that 'The capacity of the reaction chamber to receive the deposited carbon limits the amount of oil that can be run through, it being common practice to run until the reaction chamber becomes so full of carbon that it is necessary to shut down and clean it out'?

"A. Yes, that describes one part of the Dubbs
484 operation; not the whole Dubbs operation.

"Q. Will you please refer to that B again, and point out in what other respects the operation there described differs from the Dubbs operation?

"A. As I said in the beginning, in the apparatus in which this process is used, all the heating is done in the tubes. All the heating is done in the tubes. That is the Dubbs. But a considerable portion, that is not Dubbs.

"Q. Did you not tell me that in this Burton-Clark there was no heat put into any chamber?

"A. Yes, but that does not mean that this Burton-Clark avoids that completely. It is not necessary. You can have proper heat there better than with that shell with the gases that have already passed between those tubes.

"Q. This system over which a considerable portion of all the heating is done in the tubes?

"A. In the tubes all the heating is done.

"Q. Under those circumstances you also disclose Dubbs, so far as the heating is concerned?

485 "A. That does it. If all the heating is applied to it, the same as Dubbs, where the heating is supplied in the tubes.

"Q. Is there any other statement here that does not describe Dubbs besides the heating which you have referred to?

"A. Well, it does not refer to the drawing off of the residuum, which is an improved part of Dubbs.

820 "Q. Well, now, in some of the operations conducted by the Dutch Shell, as licensee, they did not withdraw residuum, did they?

"A. That is quite a different kind of operation.

"Q. You would not consider that a Dubbs operation?

"A. Yes, I think I would still consider that a Dubbs operation.

821 "Q. Then from that I take it that it would describe that type of operation, would it not?

"A. It would, as I said before, it would describe part of Dubbs' operation. I think that it describes a process, but it does not describe the whole process.

"Q. So much as is described here would be applicable to the Dubbs if you assume, as here stated, that all the heating is done in the tubes, is that correct?

486 "A. In that case, that first sentence, that would apply to Dubbs if the Dubbs is operated with what we call a non-residuum run, where we only make coke and no residuum, then it would apply to Dubbs, but it would not fully describe Dubbs. Dubbs had considerable improvements over this which are not described here."

The Dutch Shell Companies were using the Trumble process for the cracking of oil prior to the time that we entered into this license agreement with Universal. There is no difference in Trumble and Dubbs respecting the point at which pressure was released. In the Trumble operation, after we ran under pressure, we also released the pressure at the distillate receiver tank. That is the only place where you could do it.

487 We operated these plants according to the teachings of the patent but that did not prevent us from doing other things besides.

On poge 2 of the patent, line 7, DX 527, it is said, "The apparatus disclosed herein is especially adapted to work under pressure." That proves that even in the patent it intended that. If you will look at the

488 drawing you will see there is no other place that we could release it, but just where I said, because the vapors come from the evaporator and go to these two dephlegmators, and then go through this lower end, and there is a pipe fits to here where the vapor

822 plus the gas comes out. In this apparatus is nowhere any pressure release mentioned. It can only be had at the pipe 62.

"Q. I refer you to Figure 2, and particularly valve 22 and ask you to state what that valve 22 is used for?

"A. 22 is a valve between the heating coil and the evaporator.

"Q. What is it used for?

"A. That can be used for keeping the heating coil under a higher pressure than the rest of the apparatus.

"Q. And isn't that the only pressure valve that is shown in this Trumble operation?

489 "A. It is a pressure valve shown in this operation, in this patent, yes, but it does not mean that it would not allow you to do what I say, to run the whole apparatus under pressure. I say the apparatus disclosed here is especially adapted to run under pressure."

As far as that patent is concerned it is contemplated to release the pressure at that valve 22 and I refer particularly to page 3, line 8, where it says that "A hot mixture discharges through the top 19 being connected to pressure control valve 22 which is connected to the elbow 15." That means that 22 is a pressure control valve and I could drop that pressure at the end of the coil. I do not know whether it teaches to
490 maintain a pressure beyond that valve or it teaches that it is possible to do that.

On page 4, line 101, DX 527, it says, "Operating with some parts of crude oil it is necessary to put some pressure on the oil in the heating coil to produce the desired product. That can be readily done by partially closing the valve 22." That shows what I said, you can use it, but it is not necessary to use it. It can be used for certain types of oil. If I use that valve, that is where the pressure reduction occurs. I
823 would have to read the whole patent to find any other place in this patent where it talks about releasing pressure. I do not find any valve beyond the valve 22 in the drawing where it discloses that is used for controlling pressure.

491 On or about the 5th day of October, 1935, I signed an affidavit which was filed in the Supreme Court of the District of Columbia in the case of *Texas Company* v. *Conway P. Coe, Commissioner of Patents*, in which I said in part:

492 "The Royal Dutch Shell Company was the owner of patent to Trumble No. 1,281,884 until some time in 1925, and it practiced the process of that Trumble patent at several of its plants for a number of years commercially, chiefly for reducing the viscosity of fuel oil to provide a fuel oil meeting the specifications of the British Admiralty and partly also for the production of cracked gasoline.

"In such practice of the Trumble process the apparatus consisted of a pipe coil in a heating furnace. The raw material was pumped through this pipe coil

which was heated in the furnace. From there the
493 oil and vapor were discharged into an evaporator in wh[redacted]e vapors and gas separated from the liquid portion. This liquid portion consisted of residuum, the major part of which was recirculated through the heating coil, the balance being withdrawn in an effort to remove the carbonaceous material.

"The reduction of viscosity of the oil was largely accomplished in the heating coil which was maintained under some pressure by a pressure valve located between the heating coil and the evaporator.

"Very little, if any, pressure was held on the evaporator beyond the pressure valve, and the evaporator contained only a small amount of liquid oil, as compared to the volume of the evaporator. The main function of the evaporator was to liberate the vapors from the heated oil delivered into it."

That correctly states the operation of the Trumble operation in those places where we used them for vis-
494 cosity reducing. And we released pressure at the end of the coil. That is the operation described in the patent.

494 824 "Q. When you separated your gas what did you do?

"A. Well, we built these parts first for the particular purpose of what we call viscosity breaking, which is a kind of mild cracking. And doing that we obtained at the same time a little by-product of gasoline. And we were experimenting in order to develop this same viscosity breaking apparatus, which we called a converter, into an apparatus to produce a gasoline as chief product. And we were working on that, and as you could see from that description, we were circulating the residuum through that apparatus.

And then when we saw this apparatus at Independence, Kansas, I said, 'My God, why didn't I think of that, to take that residuum out and have only clean reflux go back.' And that is the reason that we wanted
495 to make the agreement with Dubbs, and that is why I expressed in that other letter in which I said, 'Well, we ought to recognize that we have been beaten by Dubbs.' That was the only thing, but in our various experiments we tried to increase that gasoline production."

In the affidavit, I was describing how this Trumble operation was used in the separating plants. In the Trumble patent, DX 527, the operation described is largely the same as the disclosure given in the affidavit. It is not true that the operation that I just gave of the Trumble patent where we may have used some pressure somewhere else, was never used by us to any extent whatsoever because we found it in the Dubbs process. I am not quite sure that in our operation of the Trumble process we always released the pressure at the end of the coil. It is expressed in the patent description that we can use that for certain types of oil. In that operation we made very little
496 gasoline.

My affidavit says that the Royal Dutch Shell Company was the owner of Trumble patent No. 1,281,884 until some time in 1925, and that we used the Trumble process commercially a number of years, chiefly for the reduction of viscosity of oil to provide fuel
825 oil to meet the specifications of the British Admiralty, but in the course of that we produced some gasoline. That gasoline had to be removed in order to meet the specifications of the British Admiralty for fuel oil with a high flash point.

497 We used the Trumble operation only experimentally to get commercial yields of gasoline, It was not economically capable of being used for that purpose.

"Q. So you never had an economical operation that would satisfactorily produce gasoline in commercial quantities with the Trumble process, is that correct?

"A. We stopped further experimenting and never reached that point.

"Q. Then as described here in this affidavit, and as described in the Trumble patent, this process cannot be used to produce any commercial quantities of gasoline economically, is that correct?

"A. You are taking it the wrong way. This plant was used in the operation and in order to make British Admiralty fuel from fuel oil completely unsalable. And in doing that it paid for itself. Now, we get a small percentage of gasoline in doing that. Of course that is commercial, isn't it? I mean commercially it is economical, you get it for nothing."

498 I am not sure that the Trumble apparatus as de-

described in the affidavit and as disclosed in this
498 826 patent could operate for the production of gasoline in commercial quantities, forgetting the idea of mere viscosity breaking. We never tried it, but if we take, for instance, gas oil instead of fuel oil or heavy fuel, we might have done it.

The Burton still will not run any higher than about 760 or 770. I do not think they could run as high as 900° because of probably too much coke formation.
499 I am quite sure that Burton-Clark couldn't go that high. They may have gone a little bit higher than Burton, but not much.

500 Referring again to this patent No. 1,891,218, DX 529, at the bottom of the first page, line 96, it says: "Since the apparatus may be run at temperatures as high as 900 degrees Fahrenheit, it is uneconomical to shut down and thoroughly cool it for cleaning and the cleaning operation is both expensive and trouble-
501 some."

"Q. When you were mentioning those temperatures you weren't referring to Burton and Burton-Clark, were you?

"A. I am afraid that is patent language, I do not know."

That temperature would not apply to Burton-Clark. I doubt whether it would apply to Dubbs in 1922.

We went to 900 degrees with the Dubbs operation after the hot oil pumps were put in. We couldn't go to 900 degrees before that because at the time before the hot oil pumps were put in, the flow of oil through the tubes was comparatively slow. I cannot give you any idea what that velocity was, but as soon as the hot
502 oil pump was put in, we increased the velocity
502 827 through the tubes, because those pumps overcame the resistance that would be created by an increased velocity.

Increased velocity permits more oil to be put through the tubes, but it shortens the time of exposing the oil to that high temperature, the velocity being higher. To compensate for that loss in time, the temperature was brought up. Under those circumstances the use of a pump in the Dubbs operation certainly was an advantage. It was much more advantageous than hydrostatic flow; we couldn't build those towers so high

as to get the same velocity that was obtained by means of a pump.

The first vertical reaction chambers we used on the Dubbs operations were on Dubbs No. 2. They were
503 designed 10 feet by 10 feet. Gradually we increased them to 10 by 15, and then to 10 by 30 and then to 10 by 40. They were 10 feet in diameter, and the cylindrical part of the reaction chamber was 10 feet or 15 feet or 20 feet or 30 feet or 40 feet. We increased the size of those reaction chambers in order to have a larger space for spreading the coke. That gave us a longer period between cleanings.

This same patent, No. 1,891,218, DX 529, page 2, beginning on line 1, says:

"Moreover the manufacture of larger stills or reaction chambers having a diameter of from 6 to 10 feet capable of withstanding considerable pressures
504 is both difficult and expensive and these big stills or reaction chambers containing oil under high temperatures and pressures form a very serious property and life hazard."

That absolutely fits the character of reaction
504 828 chamber which we were using in the Dubbs operation at about that same time.

That would also fit the character of shell that Burton-Clark was using, which did explode. These shells used in the Burton Clark operation, where the shell was not heated, were made of the same sort of material as were the reaction chambers of the Dubbs operation, but the shells of the Burton and Burton-Clark stills were riveted, while the reaction chambers in the Dubbs plant were practically always welded construction.

505 In the Trumble process, in the actual operating plant, the charging stock was heavy fuel oil, heavy residual oil. We never tried to operate those stills using gas oil because we were too busy trying to get result with fuel oil. We were interested primarily in converting fuel oil; and, as a matter of fact, since we got our Dubbs operation in good shape, we have practically exclusively cracked fuel oil in our refineries,
506 with the exception of some places where we may have had a special product to crack. We did that on the principle that we wanted to make our gasoline from the raw material that was abundant and cheap, and

therefore gas oil was excluded. Generally speaking, it is a more difficult operation to crack fuel oil than gas oil.

507 Fuel oil, forming a greater quantity of carbonaceous substances than gas oil, will deposit carbon throughout the apparatus more readily than gas oil.

This Trumble operation that we operated was a continuous operation; you feed and withdraw the same as you would in Dubbs.

After we entered into this license agreement, the design of an equipment to be installed in our plant

508 829 at Wood River was started. The equipment was known as Roxana No. 1 and is shown in the drawing PX 522.

The differences between the apparatus there shown, as compared with the apparatus which I saw at Independence, are as follows:

The Dubbs No. 1 in Wood River had four parallel pipe coils in the two furnaces instead of having only one coil. At Independence they had no parallel flow

509 whatever. That parallel flow in this No. 1 operation caused trouble because it was very difficult to coax the oil to divide into four equal portions to flow through these four parallel flows, and that caused a collection of carbonaceous material.

At Independence the large tubes were built in such a way that they kept warm by means of flue gases, while these were completely shut off from the flue gases at Wood River. Here the large tubes were just on top of the furnace, and in an insulated room so that they wouldn't lose heat. No heat was applied but they were in a hot temperature.

510 Other changes there were that those large tubes were interconnected with cross-over tees. They worked in two sets of three tubes, connected in series. From each set of three tubes the cracked residuum was separately drawn off and the vapors were separately drawn off on the top. We had two vapor lines, one from

511 each set of three 16-inch tubes, leading to the dephlegmator.

In Independence a condensate, called the reflux, was obtained largely in what is called an aerial condenser, which is simply a coil exposed to the outside air—

511 830 a rather irregular method of cooling, because it may be 50 degrees now and it may be zero tomor-

row morning. That makes an enormous difference in the condensation effect of these aerial condensers. We advised Universal to replace this aerial condenser at Roxana by what we call a dephlegmator, which is an apparatus that is very extensively used in the Shell Group Refineries.

512 In Unit No. 1, I think we had this overhead feed of raw oil, but it is possible that the raw feed went directly to the coil and that the reflux from the dephlegmator was mixed with it. That is what we called our direct feed to the tubes.

The cooling of the dephlegmator was by means of part of the reflux that came from the bottom. The dephlegmator produced a certain quantity of reflux condensation; a part of that was cooled and pumped to the top of the dephlegmator as a cooling medium.

513 This dephlegmator and the method of cooling the dephlegmator were advised by us.

I protested very strongly against the idea of a furnace with four parallel coils. Pollock insisted on having it that way. On the other hand, I think that part of the feature of the furnace where we have the fuel burning here, and then carried over through these ports with a downward flow over the cracking tubes, was our design. Mr. Pollack and Mr. Dubbs and I all partly collaborated in the design of this equipment. Mr. Dubbs was instrumental in okaying the ultimate design of this apparatus. That was according to the agreement.

514 My objection to this type of furnace having four parrallel tubes was that the oil came in without a very strong pressure behind it and it is very dif-

514 831 ficult to get it to divide itself evenly over four coils, and if it does not, the oil would not be heated properly, and the coil that got too little oil would be overheated with the chance of coking up.

515 The proper heating of the coil in one of these cracking furnaces is a very important consideration.

The Universal insisted on putting in the furnace shown in PX 522 with the four parallel tubes; it was their design, and, according to our agreement, the design had to be approved by the Universal because they undertook to guarantee it.

516 The temperatures and the pressure used in Roxana No. 1 were both increased over the temperatures and

pressures used at Independence, in order to get a higher yield and put more oil through. The separation of the heating surface into four coils was an effort to put through more oil, to have four streams of comparatively short length instead of one stream of four times the length.

The height of our dephlegmator on No. 1 Roxana was slightly increased over what it was at Indepen-
517 dence, PX 522 gives the height as 28 feet. That wasn't much higher than what we had at Independence.

We had difficulty because of insufficient velocity through the tubes in Roxana No. 1; the oil didn't distribute evenly over the four tubes, which caused one coil to coke up; that was the kind of thing that happened. At other times on another run it would not happen and we would get a good run.

Heating is an important proposition, and if it isn't carried on properly it will coke up the tubes, but in connection with what I said, the proper velocity
517 832 through the tubes is important.

Everything was a little bit too stiff. For ex-
518 ample the connection between the heating coils and the 16 tubes in PX 522 is quite stiff. I did not call the Universal Oil's attention to that when the plant was designed because we didn't notice all the details of it.

We actually started to operate this Roxana No. 1 plant in 1921.

519 There is no way at the present time I can place the dates when either No. 1 or No. 1A were put in operation any closer than 1921.

We made the license agreement on the 22nd of De-
520 cember, 1919, and thereafter we had to make the designs. There was also a little delay because our company maybe thought after all that we didn't want to crack oil.

521 In the Root case I said, "I am not quite sure whether the plant in the shape it was originally built met the guarantees. There was decided to make certain changes on it where deficiencies, let us say engineering mistakes, entered in." My recollection on these things is not quite clear; it is 16 or 17 years ago, but, based on the fact that we continued the work, I presume
522 that it met the guarantee. If it had not we wouldn't have spent more money on it. It was either the No. 1 or the No. 1A that met the guarantees.

The improvements in the Dubbs Standard unit which I referred to were improvements in the furnace by which over-heating of the tubes was prevented by applying a system called flue gas circulation. Another improvement was introduction of the hot oil pump.

Those are really the two major improvements that
522 833 I was referring to when I said we built a number of Standard units with some mechanical improvements.

The furnace shown on PX 524 is the furnace used by Universal which the Dutch Shell was responsible
523 for. The advantage of that furnace was that the tubes were not subjected to direct impingement by the flames. This would prevent local overheating of tubes, which would cause warping and oxidation thereof and might increase carbon deposits in the tubes. Hot spots are caused by overheating. A serious hot
524 spot takes care of itself and results in a blowout. If it wasn't serious we interrupted the run and cleaned the tube.

I do not know when we started running at the higher temperatures of 950 to 1000 degrees.

The raise in temperature was gradual. We got to 950 degrees several years ago. I would say 935 was normal operating temperature in most of the plants,
525 and we got to that a few years ago.

In the Fleming operation that I have described we used temperatures that were on the same order as those that we have in the Burton, that is, about 760, 780° F. The pressures were 150 pounds. In the Fleming still we used a gas oil charging stock. The purpose of using a pressure of 150 pounds was that of preventing the oil from just simply distilling off
526 before it has had time to crack. In the Dubbs operation this pressure was used on the chamber for the same purpose.

The Cross process, which we also tried out, was a synthetic crude process. It consisted of a pipe furnace in which charging stock was heated at a high tem-
526 834 perature. From the pipe furnace the oil went into a long horizontal chamber which was kept about half full, and at the other end of the chamber the oil and vapors were drawn off, and the whole mixture went through a condenser, and in the end of the condenser we got a converted oil which contained

gasoline. This oil was then distilled as ordinary crude
527 oil, and we took off the gasoline. We often, but not always, took off a second cut that wasn't gasoline that was used again for charging stock. In this Cross operation we did not return any of the residuum to the coils. The charging stock that we used in these Cross stills was gas oil.

The pressures used were rather high—considerably higher than those that we used originally in Dubbs—and the temperatures were in the neighborhood of 840, 850 degrees.

528 Sometimes we ran the Cross furnace so that the cold oil entered the lower tubes, which were directly over the fire. Sometimes we ran the opposite way, put the oil in the top tubes first. Sometimes we started it in the top tubes, let us say, for two rows of tubes, and then went to the bottom. There were numerous variations that were made. We used the Cross process
529 for a certain number of years, and then for a long time we did not use it, but we still have some in operation.

We did not find it satisfactory for cracking purposes because we compared it with the results that we got in our Dubbs plants, and decided to extend the Dubbs, build more Dubbs plants and no more Cross plants.

The characteristic disadvantage in the Cross still
529 835 was that it could only handle gas oil and we were primarily interested in the cracking of fuel oil. We had trouble with the Cross furnace, and I do not
530 know whether we considered it at that time satisfactory; at present we would not.

531 Comparing the construction of the No. 1 and the
532 No. 1A plants, the first difference was that the four parallel coils in No. 1 were replaced by a single coil in 1A.

The furnace used in 1A was the furnace that the Dutch Shell designed, in which we had a bridge wall and tubes on the side of the wall opposite to the firing chamber, so that the flames would not impinge upon the tubes. It was a design of furnace that we were using for other purposes, and the same design was used in No. 1 also.

A principal difference was in the use of a single
533 horizontal chamber instead of these large tubes on top. We went to one single chamber in place of the

plurality of chambers that we had in No. 1, because there was not the slightest reason to divide it up into four tubes which would require a lot of connections and cause leaks. Other advantages that we obtained in using the single horizontal reaction chamber, from the operating standpoint, outside of the one that I I have just given, were chiefly the mechanical design; the principle of the thing is exactly the same. Cleaning was decidedly easier, and that was a consideration.

In operating No. 1A, the horizontal reaction chamber was maintained about half full of liquid oil, or we could change the level of oil by means of the various draw-off lines that were provided.

534 836 That gave us the opportunity to vary the amount of oil that was standing in that reaction chamber. Those various drawoff lines were also provided so we would have a drawoff as coke would accumulate in this reaction chamber.

The temperatures and pressures on this No. 1A operation were about the same as on No. 1. 1A gave, generally speaking, a better yield, chiefly because

535 it was easier to keep its operation steady for a large part on account of the fact of the change in furnace design.

At that time we considered the furnace used in No. 1A much better than the Cross furnace because we did not have flame impingement upon the tubes.

While we were operating this No. 1A apparatus, we were discussing the design of future apparatus. I do not remember when we started the design of No. 2. We were constantly discussing improvements in the design of the plant with the Universal people.

536 The principal difference between 1A and 2 was that No. 2 had a vertical reaction chamber.

I considered the vertical reaction chamber a much better piece of equipment in this process than the horizontal reaction chamber, chiefly on account of the ease of removing coke, and also because, being a vertical chamber, at every level of the chamber the material of the chamber was subjected to the same conditions of temperature and stresses, whereas in the horizontal chamber you always had much more stresses caused by the difference in the temperature be-

537 837 tween the top and the bottom. Thereafter, in all the units that were built we used the vertical reaction chamber.

After that we built a number of plants, and in all of these plants that we built immediately thereafter we followed the design as incorporated in No. 2.

The reaction chambers in the first plants were 10 by 10 feet, then 10 by 15 feet, and I remember correctly, we jumped from 10 by 15 to 10 by 30, and later on to
538 10 by 40. The Martinez unit, like PX 524, with a 10 by 10 reaction chamber, was installed late in 1922 or the early part of 1923. It was a commercial unit, but it was used for experiment and developing. We operated it experimentally until we decided to adopt the process as a regular part of our refinery operations in Martinez, and that was probably 1923.

539 The chief difference between the unit that was originally installed and the two units we installed later on and operated was in the size of the reaction chambers and in the application of flue gas circulation in the furnaces. The reaction chamber was 10 x 40 instead of 10 by 30. We also increased the number of tubes in
540 the furnace at that time. We had something like 60 tubes in each of these two units that we installed, as compared with 50 tubes in the original unit. They were run both on the residuum and on the non-residuum basis.

The units at Martinez have been run principally as residuum operations. Whether you withdraw residuum or not depends on whether you have an outlet
541 for cracked residuum or not. The residuum that
541 838 was made in the beginning had a large percentage of bottom settlement in it.

In this Martinez plant, in or about 1927, we installed
542 in one unit a 5 by 25 reaction chamber in which we inserted a stirring device to keep the residuum in constant motion. It was one of our experiments there to prevent the deposition of coke in the reaction chamber. Patent No. 1,811,646, DX 531, is that experimental stirring device that we used in that chamber.

543 The run No. 1 given on page 3 of this patent correctly reflects the operation of the Dubbs apparatus in the process at Martinez without the use of a stirrer. Run No. 2 given on the same page correctly reflects the operation with the stirrer. We conducted a number of other experiments on these units at Martinez to reduce the coke production and to decrease the bottom settlement in the residuum.

544 Flashing residuum means to withdraw the residuum to a chamber of lower pressure, take off vapors which could be used as stock, and drawing the residuum that was withdrawn from the system from the bottom of that low pressure chamber. Flashing the low level residuum was done commercially at some places.

The effect of running in this low level operation and flashing the residuum and returning the flashed
545 distillate material, to the heating tubes, is that it removes from the residuum that is drawn off from the reaction chamber certain lighter distillates which are suitable for cracking, and therefore increases the gasoline yield. Flashing by itself does not increase the length of the run. It is the low level part of the operation that increases the length of the run,
545 839 not the flashing. The low level operation also reduced very materially the carbon that is produced in the chamber. And with the low level operation you can also control your residuum so as to make a residuum that is low in B. S. content.

We went to these low level operations about 1926
546 or 1927 when we applied for this patent. I don't know when we went to the low level operation in combination with flashing, but it was after we went to the low level operation.

In the operation in which we maintained a low level in the reaction chamber, the length of the run was not limited by the coke-holding capacity of the deaction chamber, if we succeeded in preventing coke deposition in the chamber. We did not completely succeed in that when we got to the low level operation; the chamber still determined the length of the run, because we still got some coke deposition in those chambers.

547 Later on we gradually succeeded in reducing the amount of coke in the chamber. There would always be some coke deposited. As we succeeded in reducing the amount of coke in this low level flashing operation, we did not let the reaction chamber get full of coke, and hence the size of the reaction chamber under those circumstances, and the coke-holding capacity of the reaction chamber, did not determine the length of the run in that type of operation.

It is true that in any cracking operation the market value of the residuum is an important consideration as well as the amount and character of gasoline which is produced.

548 840 When we were negotiating with the Universal Oil Products Company for this license under the Dubbs patent, I and my company were searching for a process in which we could crack the residuum of fuel oil rather than gas oil.

At the time we made this agreement with Dubbs, I did not know of any other process outside of the Dubbs

process in which fuel oil could be fed directly to the heating tubes and make commercial yields of gasoline. At the present time there are some imitations of the Dubbs process which do it.

549 Since the Dutch Shell was primarily interested in cracking fuel oil, the possibility of developing the Dubbs process so that it could handle this type of charging stock as a direct feed to the process was an important consideration in the negotiations which led to our taking of a Dubbs license.

The difference between the residuum run and the non-residuum run is that in the non-residuum run the final deposition product of the process is coke, while in the residuum type of operation it is cracked residuum.

In the residuum type operation you draw off residuum, and in the non-residuum process we did not draw off the residuum.

552 This non-residuum type of operation was something that was developed subsequently to the taking of the Dubbs license. One of the reasons for developing the non-residuum run was the difficulty at some places of disposing of the cracked residuum. This difficulty was because of the high bottom settlings content in the residuum that would cause difficulty. Bottom settlings is carbon settlings in the residuum which made it uncommercial for fuel oil, if you got too much of it.

553 841 The difference in the regular operating schedule is that in operating the non-residuum run the cycle of operation is much shorter because of the rapidity with which this reaction chamber fills up with coke.

Whether a 72-hour on-stream cycle is a good cycle for a non-residuum run with a 10 by 40 reaction chamber depends on the crude material. One fuel oil will, for instance, produce some 80 pounds of coke per barrel intake, and another one will produce only half of that. So in the one case the run is about twice as long as in the other case.

554 The regular Mid-Continent, 26 gravity crude that we used in Wood River gave around 50 or 55 pounds of coke per barrel. A 10 by 40 chamber will hold about 160,000 pounds, so that, then, dividing 160,000 by 50 or 55 gives the number of barrels that can be run before the coke chamber is full. We ran about 2,000 barrels a day then. Those operations were, as a rule, not very long. It is much larger today. We have now a system of switching over from one

reaction chamber to the other one without interrupting the run.

555 In those places where, for instance, we could use the cracked residuum for our own operation, or sell it, we used the residuum type of operation. In those places where we did not, and where we could not get rid of the coke, we used a non-residuum type, and in most of the refineries we used to do the two systems combined.

"Q. Mr. Pyzel, as I understand your testimony in direct, in the operation of the Dubbs process as you practiced it, vapors were formed or generated in the heating tubes, is that correct?

555 842 "A. Vapors were formed in the heating tubes, yes, sir."

"Q. It is true, isn't it, that the formation or generation of vapors is referred to in this art as vaporization?"

The witness was directed by Mr. Hall not to answer.

"Mr. Hall: If your honor please, we want to insist upon the objection that is made to that question."

• • • • •

557 "Mr. Von Holst: I would like to point out, on page 8 of Pyzel's deposition, in answer to a question on direct examination, the witness said, in describing the Independence operation, 'In the 10-inch tubes vaporization of the product coming from the 4-inch tubes took place; that is to say the vapors were separated from the heavy residual liquid.'

"Now, it is our contention that he described what took place in the 4-inch coil as vaporization and in the 10-inch coil as vaporization. Then he proceeded to define it, that is to say, the vapors were separated from the heavy residual oil.

"Then on the next page he said, in answer to this question 46, 'Were any vapors, so far as you know, generated in the 10-inch tubes?

A. There were vapors formed in the 4-inch tubes but the separation of vapors from liquids which would constitute a vaporization took place chiefly in the 10-inch tubes.'

558 "It is our contention that in those two places the witness defined vaporization in the sense in which the plaintiff used it in this case, and therefore opened up the subject of what vaporization means in the art, by that testimony. It seems to us ridiculous, as you

will see pretty soon the other questions are all along the same line, that the witness undertook, on his direct examination, to go out of his way to tell this Court that the separation of vapors and liquids which occurred in the 10-inch tube was vaporization. He said it would constitute vaporization.

"Now, of course it is the defendant's position in this case, as your Honor has learned from the opening statements, that it is the change of liquid into vapors which is vaporization, and not the separation of the vapors from the liquid. Now, the witness having undertaken to put his construction on it, it is our position that he was open on cross examination to impeachment by showing that he himself had used that in the ordinary sense to denote the formation of vapors.

576 843 "The Court: I will rule against you on that.

"Mr. Thiess: We will put it in under the rule, that is all."

Testimony Under the Rule.

582 "Q. I now want to refer you to your patent No. 1,506,444, and particularly to page 1, beginning at 583 line 97, where you say, 'I have found that in the operation of cracking stills the temperature must be maintained at such a high point that a considerable portion of the residuum delivered through the pipe 20 is vaporized as soon as the pressure is relieved, thus vaporization being assisted by the addition of steam. In the separating chamber 25, these vapors are taken off, a greater portion being eventually delivered into the storage tank 34.' In the statement just quoted to you from your patent, do you use the word 'vaporization' to indicate vapor formation?

584 "The Court: The objection is sustained.

"A. That in this sentence means that as soon as the pressure on that very hot residuum is relieved, vapors will tend to form, and that the tendency of forming vapors is increased by adding steam.

"Q. I refer you to your patent No. 1,891,218, page 3, beginning at line 31, which reads, 'A release in pressure would naturally result in an immediate vaporization of the lighter and more volatile portions of the oil.' In the statement just quoted, do you

use the word 'vaporization' to indicate vapor formation?

"Mr. Hall: That is the same objection there, your Honor.

"The Court: Yes, objection sustained.

"A. Yes, in this case it means that if the pressure is released vapors can separate out from the oil in which they probably formed already, at least partly.

585 844 "Q. Will the release of pressure in any way affect the separation of the vapor from the liquid?

586 "Mr. Hall: Same objection and notice.

"The Court: That objection is sustained. There will be the same ruling.

"A. The release of pressure as a rule means that there is more volume available for the liquid and that therefore vapors will have the opportunity to separate from the liquid.

"Q. The volume is constant, is it not? The release of pressure is merely a reduction of pressure and a reduction of pressure will cause what?

"Mr. Hall: Same objection.

"The Court: Same ruling.

"Q. (continuing) Will cause vapor formation, will it not?

Mr. Hall: The same objection is made your Honor.

"The Court: Same ruling.

"A. I think that the release of pressure means an increase in volume and not a constant volume.

587 "Q. I am talking about the constant volume of the container. The container is constant, isn't it, in volume?

"A. You will have to describe to me exactly what you mean by this. I cannot follow this question, really.

"Q. If you have liquid under pressure, hydrocarbons under pressure—

"A. Yes?

"Q. (continuing)—and you release—

"A. In what?

"Q. In a tank.

"A. In a tank?

"Q. Or in a coil, and you release or reduce the pressure on that hydrocarbon in the tank or coil, that reduction of pressure, if the temperature of the hy-

drocarbon is high enough, will cause vapor formation, will it not?

587 845 "A. That will cause vapor formation.

"Mr. Hall: Now, if your Honor please, there is notice on the record that we would not take the time to repeat all of these objections, but it stands against this entire line.

"The Court: Yes.

588 "Mr. Hall: And, I understand, the same ruling.

"Q. I wish now to call your attention to the same patent, page 3, beginning line 46, reading, 'This deposition is prevented by the immediate injection and mixing of cold oil with the mixture of hot products leaving the reaction coil. This injection not only cools the mixture and thus prevents vaporization of the more volatile oils contained therein, but it also supplies additional volatiles from the settling tanks, which volatiles have been in a measure freed from their solids and semi-solids by settling.' In the statement just quoted, do you use the word 'vaporization' to mean vapor formation?

"Mr. Thomas: Same objection.

"The Court: Same objection and same ruling.

"A. Yes, sir.

"Q. I now refer you to claim 1 on page 3 of this patent, beginning at line 75, which reads: 'In continuously introducing said oil to a zone of lower

589 pressure in such a manner as would permit vaporization of said oil, and in checking such vaporization by introducing regulated quantities of a cooling medium to said zone of reduced pressure.' In the statement just quoted do you use the word 'vaporization' to indicate vapor formation?

"Mr. Hall: Same objection.

"The Court: Same ruling.

"A. Yes, sir.

"Q. I want to now refer you to your patent No. 1,622,737, page 2, beginning at line 114, which reads, 'Due to the reduction in the partial oil vapor pressure inside the rerun still 21, which is due in turn to the presence of steam, I am able to evaporate such low boiling point vapors at this low temperature, the latent heat of vaporization being supplied by heat conduction from the liquid in the tubes 24.' In this statement just quoted do you use the word

589 846 'vaporization' to indicate vapor formation?

"Mr. Hall: Same objection.

"The Court: Same ruling.

590 "A. I use here an expression, 'latent heat of vaporization,' which is a commonly used scientific expression.

"Q. I do not think the answer is responsive to the question. I asked whether you used it to mean vapor formation.

"Mr. Hall: Same objection.

"The Court: Same ruling.

"A. Yes, sir.

"Q. Referring to Claim 3 of this patent, line 64, which reads as follows: 'Passing a portion of said condensate at a temperature slightly below its initial boiling point at the pressure at which it is condensed into a space in which its partial pressure is sufficiently reduced to cause vaporization of light hydrocarbons therefrom; and supplying a portion of the heat necessary to produce said vaporization by conduction from the remainder of said condensate.' In the statement just quoted, do you use the word 'vaporization' to denote vapor formation?

"Mr. Hall: Same objection.

591 "The Court: Same ruling.

"A. Yes, sir.

"Q. I now want to refer you to your patent No. 1,597,821, page 1, beginning at line 90, which reads: 'As a result the latent heat of vaporization of such vapors is always very low and small changes in conditions in the apparatus will result in wide variations in the amount of condensate produced.' Do you use the word 'vaporization' in the statement I have just quoted to indicate vapor formation?

"Mr. Hall: Same objection.

"The Court: Same ruling.

591 847 "A. Yes, sir.

"Mr. Von Holst: That ends the testimony under the rule."

592 We would not have been able, with the material and equipment available in 1921 and 1922, when we were operating the Roxana and the original 500-barrel units of PX 524 to have operated these stills at these high pressures of, say, 275 pounds and the temperatures at 950 and 1000—to which we gradually went later.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume 1 of the printed record, printed under my supervision, which, together with Volumes 2 to 7, inclusive, constitutes the record upon which the following entitled cause was heard and determined:

Cause No. 7912.

Universal Oil Products Company,
Plaintiff-Appellant,

vs.

Globe Oil & Refining Company,
Defendant-Appellee,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 18th day of August, A. D. 1943.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*